JEFF FLAKE
8TH DISTRICT, ARIZONA

240 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PHONE (202) 225-2635
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DISTRICT OFFICE:
1648 SOUTH STAPLEY DRIVE
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WESTERN CAUCUS
VICE CHAIRMAN

Congress of the United States
House of Representatives

SUBCOMMITTEES:
INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT
ASIA, THE PACIFIC, AND THE GLOBAL ENVIRONMENT

COMMITTEE ON THE JUDICIARY
ON LEAVE

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEES:
INSULAR AFFAIRS
NATIONAL PARKS, FORESTS, AND PUBLIC LANDS

752996

April 28, 2008

President George W. Bush
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Bush,

As I am sure you are aware, the Energy Independence and Security Act of 2007 provided the Administrator of the Environmental Protection Agency with the authority to waive the renewable fuels mandate if there are problems with the domestic supply of renewable fuels or if implementing the mandate would severely harm the economy or the environment. Given the impact of the burgeoning and heavily subsidized ethanol industry in the U.S., I urge you to direct EPA Administrator Stephen Johnson to begin the process of waiving the standard in whole and as quickly as possible.

Under the mandate, the U.S. is required to produce nine billion gallons of fuel from renewable sources this year and 11 billion gallons next year, with exponential increases through 2022. To date, domestic corn, already a heavily subsidized commodity, has been the primary source for biofuel and the mandate has encouraged farmers to focus agriculture production away from food manufacturing and toward fuel production. The Congressional Research Service estimated that ethanol production will utilize nearly a quarter of the U.S. corn crop in the 2007-2008 timeframe. One of the cumulative impacts of this artificial increase in demand for corn, a staple in food production and animal feed, has been a dramatic increase in corn price. Corn is being sold at nearly six dollars a bushel today, as compared to two dollars a bushel nearly two years ago. This, in turn, is contributing to increasing food costs. No doubt you are familiar with the recurring media reports, both domestically and internationally, highlighting the sustained increase in food prices.

While the intended goal of the renewable fuels mandates was to reduce national dependence on foreign oil, the new standard has done little but add stress to an already strained economy. Additionally, the ethanol production is amassing a dubious environmental record, with concerns being raised over whether the positive aspects of the biofuel are actually being outweighed by the negatives factors associated with increased corn production.

Surely, the unintended consequence related to corn production and food prices are adequately harmful to the economy to warrant action. As the percentage of corn being used for

ethanol production rises and the renewable fuel standard increases, a failure to take action will lead to worsening problems. I urge you to direct EPA Administrator Stephen Johnson to waive the renewable fuel standard. I appreciate your attention to this matter.

Sincerely,

JEFF FLAKE
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 11 2008

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Flake
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Flake:

Thank you for your April 28 2008, letter to President George W. Bush, pertaining to the U.S. Environmental Protection Agency's (EPA) pending rulemaking process regarding renewable fuels as required by the Energy Independence and Security Act of 2007 (EISA), and urging that EPA begin the process of waiving the renewable fuel standard (RFS) and as quickly as possible.

At this time, EPA's Office of Transportation and Air Quality, under the Office of Air and Radiation, is considering new and revised RFS requirements as required by EISA. We are working expeditiously to meet the statutory deadline in EISA for 2009 RFS requirements. Separately, EPA is also considering a waiver request related to the current RFS, which was received from the Governor of Texas on April 25, 2008. A copy of the *Federal Register* notice announcing receipt of the waiver request and soliciting public comment is enclosed. We will place your letter in the dockets for both the 2009 RFS rulemaking and the waiver request.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-2806.

Sincerely,

Robert J. Meyers
Principal Deputy Assistant Administrator

Enclosure

On April 11, 2008, notice was published that the Commonwealth of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Scituate, Marshfield, Cohasset, and the tidal portions of the North and South Rivers. No comments were received on this petition.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to EPA by the Commonwealth of Massachusetts certifies that there are ten pumpout facilities located within the proposed area. A list of the facilities, with phone numbers, locations, and hours of operation is appended at the end of this determination.

Based on the examination of the petition, its supporting documentation, and information from site visits conducted by EPA New England staff, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Name	Location	Contact info	Hours	Mean low water depth
Cohasset Harbormaster	Cohasset Harbor	(781) 383–0863 VHF 10, 16	15 May–1 Nov 9:00 a.m.–9:00 p.m.	N/A. Boat Service.
Cole Parkway Marina	Scituate Harbor	(781) 545–2130 VHF 9	15 May–15 October 8:00 a.m.–4:00 p.m.	6 ft.
Harbor Mooring Service	North and South Rivers	(781) 544–3130 Cell (617) 281–4365 VHF 9	15 April–1 November Service provided on-call	N/A. Boat Service.
James Landing Marina	Herring River, Scituate	(781) 545–3000	1 May–15 Oct 8 a.m.–4:30 p.m.	6 ft.
Waterline Mooring	Scituate Harbor	(781) 545–4154 VHF 9, 16	15 May–15 Oct 8 a.m.–5 p.m. Or by appointment	N/A. Boat Service.
Green Harbor Town Pier	Green Harbor, Marshfield	(781) 834–5541 VHF 9, 16	1 April–15 Nov 24/7 Self-Serve 15 May–30 Sept. Attendant Service 8 a.m.–11:30 p.m..	4 ft.
Bridgewaye Marina	South River, Marshfield	(781) 837–9343 VHF 9, 11	15 June–15 October 9–5 p.m	6 ft.
Erickson's Marina	South River, Marshfield	(781) 837–2687	15 March–15 November 8 a.m.–5 p.m.	4 ft.
White's Ferry Marina	South River, Marshfield	(781) 837–9343 VHF 9, 11	15 June–15 October 9–5 p.m	4 ft.
Mary's Boat Livery	North River, Marshfield	(781) 837–2322 VHF 9, 16	15 May–1 Oct 8 a.m.–4 p.m.	4 ft.
** Marshfield Yacht Club	South River, Marshfield	TBA	TBA	TBA.
** South River Boat Ramp	South River, Marshfield	TBA	TBA	TBA.

** Pending facilities.

Dated: May 14, 2008.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. E8–11485 Filed 5–21–08; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0380; FRL–8569–5]

Notice of Receipt of a Request From the State of Texas for a Waiver of a Portion of the Renewable Fuel Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 211(o)(7) of the Clean Air Act (the Act), 42 U.S.C. 7545(o)(7), EPA is issuing a notice of receipt of a request for a waiver of 50 percent of the renewable fuel standard (RFS) "mandate for the production of ethanol derived from grain." The request has been made by the Governor of the State of Texas. Section 211(o)(7)(A) of the Act allows the Administrator of the EPA to grant the waiver if implementation of the national RFS requirements would severely harm the economy or environment of a state, a region, or the United States, or if EPA determines that there is inadequate domestic supply of renewable fuel. EPA is required by the Act to provide public notice and

opportunity for comment on this request.

DATES: *Comments.* Written comments must be received on or before June 23, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0380, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2008–0380, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0380. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2802; e-mail address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

(A) How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0380, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the waiver request, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

(B) What Information Is EPA Particularly Interested In?

On April 25, 2008, the Governor of Texas submitted a request to the Administrator under section 211(o) of the Act for a waiver of 50 percent of the RFS "mandate for the production of ethanol derived from grain." The request includes statements regarding the economic impact of higher corn prices in Texas. This request has been placed in the public docket.

Pursuant to section 211(o)(7) of the Act, EPA specifically solicits comments and information to enable the Administrator to determine if the statutory basis for a waiver of the national RFS requirements has been met and, if so, the extent to which EPA should exercise its discretion to grant a waiver. Section 211(o)(7) of the Act allows the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, to waive the requirements of the national RFS at 40 CFR 80.1105, in whole or in part, upon petition by one or more States. A waiver may be granted if the Administrator determines, after public notice and an opportunity for public comment, that implementation of the RFS requirements would severely harm the economy or environment of a state, a region, or the United States; or that there is an inadequate domestic supply of renewable fuel. The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver within 90 days of receiving it. If a waiver is granted, it can last no longer than one year unless it is renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy. The RFS for 2008 was published in the **Federal Register** on February 14, 2008 (73 FR 8665) and was intended to lead to the use of nine (9) billion gallons of renewable fuel in 2008.

EPA requests comment on any matter that might be relevant to EPA's action on the petition, specifically including (but not limited to) information that will enable EPA to:

(a) Evaluate whether compliance with the RFS is causing severe harm to the economy of the State of Texas;

(b) evaluate whether the relief requested will remedy the harm;

(c) determine to what extent, if any, a waiver approval would change demand for ethanol and affect corn or feed prices; and

(d) determine the date on which a waiver should commence and end if it were granted.

In addition to inviting comments on the above issues, EPA recognizes that it has discretion in deciding whether to grant a waiver, as the statute provides that "[t]he Administrator * * * *may* waive the requirements of [section 211(o)(2)] in whole or in part" (emphasis supplied) if EPA determines that the severe harm criteria has been met. EPA also recognizes that a waiver would involve reducing the national volume requirements under section 211(o)(2), which would have effects in areas of the country other than Texas, including areas that may be positively impacted by the RFS requirements. Given this, EPA invites comment on all issues relevant to deciding whether and how to exercise its discretion under this provision, including but not limited to the impact of a waiver on other regions or parts of the economy, on the environment, on the goals of the renewable fuel program, on appropriate mechanisms to implement a waiver if a waiver were determined to be

appropriate, and any other matters considered relevant to EPA's exercise of discretion under this provision.

Commenters should include data or specific examples in support of their comments in order to aid the Administrator in determining whether to grant or deny the waiver. Data that shows a quantitative link between the use of corn for ethanol and corn prices, and on the impact of the RFS mandate on the amount of ethanol produced, would be especially helpful.

Dated: May 16, 2008.

Robert J. Meyers,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. E8–11486 Filed 5–21–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

May 19, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 23, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*; (2) look for the section of the Web page called "Currently Under Review;" (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading; (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box; (5) click the "Submit" button to the right of the "Select Agency" box; and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 750 respondents, 750 responses.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Estimated Time per Response: 1–4 hours.

Total Annual Burden: 855 hours.

Total Annual Costs: $425,150.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 17, 2005, the Commission released a Second Order on Reconsideration and Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service, MB Docket No. 99–25 (FCC 05–75). The Further Notice of Proposed Rulemaking (*"FNPRM"*) proposed to permit the assignment or transfer of control of Low Power FM (LPFM) authorizations where there is a change in the governing board of the permittee or licensee or in other situations corresponding to the circumstances described above. This proposed rule was subsequently adopted in a Third Report and Order and Second Further Notice of Proposed Rulemaking, MB Docket No. 99–25 (FCC 07–204) (*Third Report and Order*), released on December 11, 2007.

FCC Form 316 has been revised to encompass the assignment and transfer of control of LPFM authorizations, as proposed in the FNPRM and subsequently adopted in the Third Report and Order, and to reflect the ownership and eligibility restrictions applicable to LPFM permittees and licensees.

Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of a corporation holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder; and, in the case of LPFM stations, where there is a voluntary transfer of a controlling interest in the licensee or permittee entity. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Congress of the United States
Washington, DC 20515

June 27, 2008

Mr. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue
Washington, D.C. 20460

Dear Administrator Johnson:

In light of recent weather disasters across the nation, we urge you to act now to reduce the amount of ethanol that must be blended into the fuel supplies.

As you know, domestic food prices are rising twice as fast as inflation and the rising price of basic commodities has been passed along to consumers. The Renewable Fuel Standard (RFS) is a significant factor in the increased cost of commodities which is causing severe economic harm for low-income Americans and livestock producers. A wide range of experts—including FAPRI, IFPRI, IMF, UNFAO, and the World Bank—have linked rising commodity prices to recent increases in corn ethanol production.

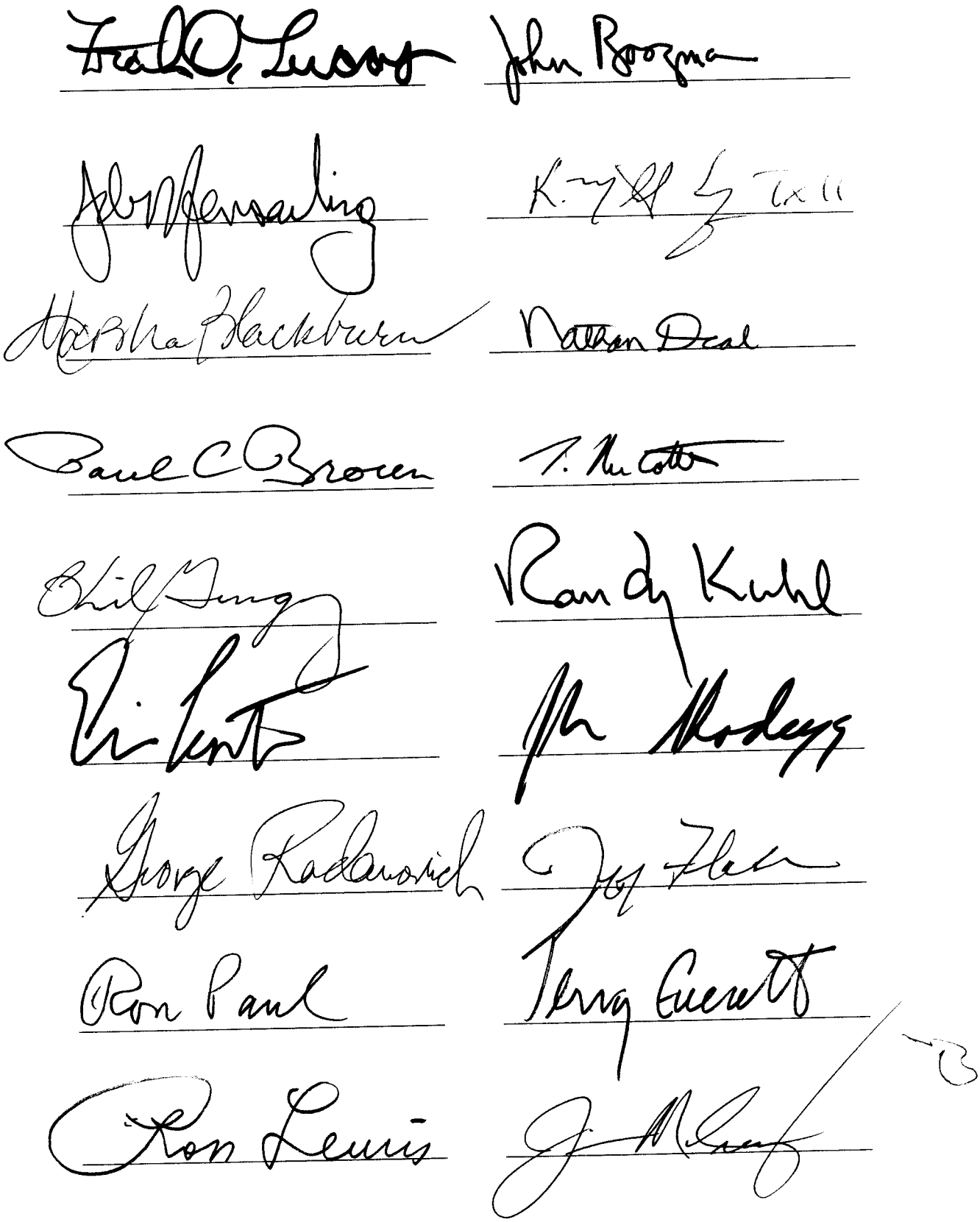
Poor weather, along with export restrictions, energy prices, and global demand are also among significant factors contributing to rising commodity prices. Severe flooding in the Midwest and drought in the South have already produced devastating losses in this year's corn crop and continued adverse weather could further decrease this year's already depleted crop. We are already seeing the impact of decreased domestic corn production on prices in the U.S., currently holding at record highs.

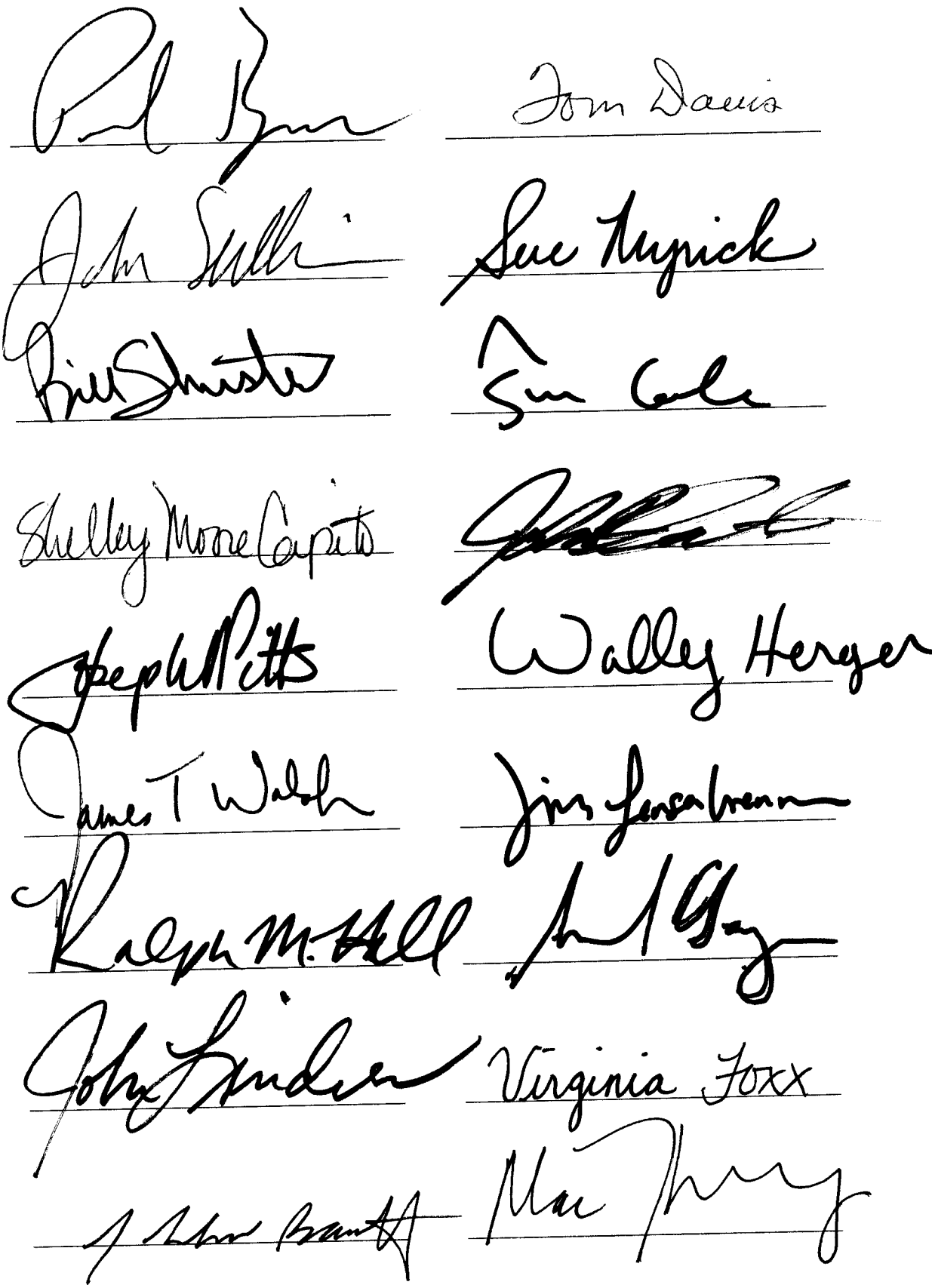
This year, approximately one-third of America's corn crop will be converted to ethanol to meet the RFS. Although supply will likely be drastically decreased from years past, the demand imposed by the RFS will dramatically increase. By acting now to reduce the RFS mandate, the Administration can immediately impact the supply of corn that will be used for food or feed and lessen the severe economic harm facing millions of Americans.

We urge you to act now to reduce the Renewable Fuels Standard.

Sincerely,

Bob Goodlatte Joe Barton





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 23 2008

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Flake
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Flake:

Thank you for your letter of June 27, 2008, co-signed by 50 of your colleagues, to Stephen L. Johnson, Administrator of the U.S. Environmental Protection Agency (EPA). Your letter requests that EPA reduce the renewable fuel standard (RFS) in response to rising food and commodity prices.

EPA is considering a formal request by Governor Rick Perry of Texas to waive a portion of the RFS. The Agency is conducting a thorough review of the Governor's request as required by the Energy Independence and Security Act of 2007 (EISA). EPA received the waiver request on April 25, 2008, and published a Federal Register notice on May 22 soliciting public comment.

We received over 15,000 comments on our Federal Register notice. A number of these comments raise substantive issues and include significant economic analyses. We believe it is very important to take sufficient time to review and understand these comments so that we can make an informed decision. With the 90-day statutory timeframe ending this week, it is now clear that a final decision will not be completed by this deadline. Rather, additional time is needed to allow staff to adequately respond to the public comments and develop a document that explains the technical, economic, and legal rationale of our decision. We also will be using this time to continue our coordination, as required by EISA, with USDA and DOE. Administrator Johnson is confident that he will be able to make a final determination on the Texas waiver request in early August of this year. Please be assured that we are taking your concerns into consideration in this matter and have placed your letter in the docket for the waiver request.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-2806.

Sincerely,

Robert J. Meyers
Principal Deputy Assistant Administrator

Congress of the United States

Washington, DC 20515

August 30, 2010

The Honorable Lisa Jackson
Administrator
U. S. Environmental Protection Agency
Mailcode: 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: PM-10 Nonattainment Area Plan for Maricopa County, Arizona

Dear Administrator Jackson:

We are writing to express our serious concerns with two recent decisions concerning Maricopa County's air quality plans that have been taken by the Environmental Protection Agency's (EPA's) Region IX Office.

Although Arizona state and local officials have attempted to work with EPA for many years on efforts to attain National Ambient Air Quality Standards (NAAQS) for coarse particulate matter (PM-10), we are concerned that EPA is presently pursuing a course of action that could result in a disruptive effect on Arizona's economy without ensuring a meaningful improvement in air quality. Instead of pursuing the present course of action, we ask that you review each matter and ensure that your agency employs a fair, collaborative and constructive process in resolving any outstanding issues. We believe this is the best course to help our state achieve the requirements of the Clean Air Act (CAA) while not imposing punitive and counterproductive measures.

First, we are concerned with EPA's pending actions concerning a proposed consent decree with respect to the Maricopa Association of Governments (MAG) Five Percent Plan for PM-10. This plan has been a success. It contains 53 new control measures for PM-10 emissions that are the best available control measures and as stringent as any in the country. Most importantly, except for certain natural conditions and events that temporarily caused elevated levels of PM-10, the PM-10 NAAQS has been met in the Maricopa County area. Clean data and compliant air quality has been achieved throughout 2010.

In a July 2, 2010 Federal Register Notice, EPA gave interested parties only 30 days to comment on whether the Agency should propose action on the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area by September 3. Local and state agencies have, of course, weighed in on this matter, but EPA's overall timeframe in addressing this litigation is unacceptably short given the exceedingly technical nature of the information that is involved and the very large local and state interests that are at stake. After revealing this plan of action only this past July, EPA indicates in the Federal Register notice that it intends to propose action on the Five Percent Plan by September 3, 2010, and take final action by January 28, 2011.

Based on our understanding of EPA's intent in this matter, it appears that the agency will propose disapproval of the Five Percent Plan. According to MAG, this disapproval could initially result in a "conformity freeze" under which new transportation projects would be halted in the Phoenix area, and it could ultimately result in the imposition of CAA sanctions, including additional offset requirements for new construction and withholding of federal highway funds, putting literally billions of dollars in infrastructure investment at risk. Even prior to the imposition of any sanctions, we would be concerned that these actions could serve to chill private sector investment in the Phoenix area at a time when our country is attempting to emerge from a recession. Even the lowest level loss of transportation funding that has been threatened could cost at least 60,000 jobs, according to MAG estimates.

Second, we are concerned with regard to EPA Region IX's abrupt decision on May 21, 2010, to deny the State of Arizona's request regarding certain PM-10 "exceptional events" demonstrations. As you know, the CAA allows certain air quality data to be excluded from the consideration of an area's attainment status if the data was influenced by natural or certain human-caused events that are effectively out of an area's ability to control. Despite a lengthy albeit incomplete process in which Arizona and MAG submitted a considerable amount of technical data and analysis to EPA, the state's request to exclude four days worth of data at a single monitor was rejected by Region IX. At a meeting to discuss this disapproval, Region IX Administrator Jared Blumenfeld called the regulations under which he made his decision "flawed."

In this regard, we would note that the exceptional events rule has been consistently criticized by a wide range of interests since its adoption, including criticism by the state air quality managers in 15 western states most immediately affected by the rule. These states, through the Western States Air Resources Council, have requested action by the EPA Office of Air and Radiation since September 2009 to streamline implementation of the exceptional events rule and to make other changes in administration of the rule. To date, however, we are not aware of any action by EPA to effectively respond to this request or to work with states and localities that are most affected by conditions such as windblown dust and other particulate matter subject to transport.

We therefore request that EPA respond to concerns of states and localities, within existing rules, regulations and ethical guidelines, in an effort to seek a reasonable solution to these issues. In order to allow this process to occur, we respectfully request that:

(1) EPA provide adequate time for an additional review of exceptional events requests by the State of Arizona. EPA should review and consider new data and information on these events and move to reconsider its May 21, 2010 determination with regard to the Maricopa County Nonattainment Area.

(2) EPA defer action with regard to its proposed consent decree so that there is adequate time for public comment and consideration. Under the accelerated timeframe that EPA revealed in its July 2, 2010 notice, EPA would propose and take final action on the consent decree in less than five months, allowing only 30 days for public comment. We seriously question whether such a truncated time period will allow sufficient opportunity for states, local areas, business and

private individuals who are not parties or intervenors to the litigation, but who may have a substantial stake in the outcome, to respond and assemble the necessary comments and information for EPA to review.

Thank you for your kind consideration and prompt attention to our concerns. Given the immediacy of this matter, we would ask that you respond in writing to this letter prior to the September 3, 2010 date of proposed action.

Sincerely,

Senator John McCain

Senator Jon Kyl

Congressman Harry Mitchell

Congressman Jeff Flake

Congressman Ed Pastor

Congressman John Shadegg

Congresswoman Gabrielle Giffords

Congressman Trent Franks

Congresswoman Ann Kirkpatrick

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

September 2, 2010

OFFICE OF THE REGIONAL ADMINISTRATOR

The Honorable Jeff Flake
U.S. House of Representatives
240 Cannon House Office Building
Washington, DC 20515-0306

Dear Congressman Flake:

Thank you for your letter of August 30, 2010 to U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson expressing concerns over EPA's position with respect to the Maricopa County, Arizona air quality plan and our exceptional events determination of May 21, 2010. Administrator Jackson has requested that I respond on her behalf since the actions we will be taking are the responsibility of my office.

We have reviewed the Maricopa Association of Governments "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." The Plan is intended to meet the coarse particulate matter (PM-10) standards established under the Clean Air Act in Maricopa County as soon as possible. Airborne particulates are linked to significant health problems—ranging from aggravated asthma to premature death in people with heart and lung disease. Because air quality in the County does not meet the levels set by law, reducing PM-10 pollution is critical for the protection of public health.

EPA has worked extensively over the past several years with the Arizona Department of Environmental Quality (ADEQ), the Maricopa Association of Governments (MAG) and the Maricopa County Air Quality Department to develop a successful PM-10 Plan. As recognized in your letter, a number of the current elements will help reduce air pollution in the County. For example, tomorrow we will be proposing to approve measures in the Maricopa Plan that control emissions from vehicle use, leaf blowers, unpaved areas, burning and other sources of particulate matter.

However, serious flaws in the inventories of PM-10 sources submitted by the State have resulted in a Plan that does not satisfy the requirements of the Clean Air Act. Moreover, ADEQ has asserted that many of the days with poor air quality are due to events such as dust storms. EPA has determined that a legally significant number of these exceedances were not caused by "exceptional events," as stated in our letter of May 21, 2010 to the State.

Consequently, EPA intends to move ahead tomorrow with a proposal to partially disapprove the Plan. We believe this decision is legally and scientifically grounded and protective of public health in Maricopa County, where residents have been breathing air falling short of the PM-10 standards for over two decades. The consent decree we negotiated in

litigation brought by the Arizona Center for Law in the Public Interest, in which we agreed to take proposed action no later than September 3, 2010 and final action no later than January 28, 2011, is consistent with our assessment of the Plan. Therefore, the Department of Justice will be filing a motion in federal district court today requesting entry of the decree. Shortly thereafter, we will issue details of the shortcomings of the Plan in a proposed rule to be published in the Federal Register, announcing a 30-day public comment period.

We appreciate your concerns about the potential economic impacts to constituents already facing hardships due to the recession. We expect the initial impact from a final disapproval of the Plan, if taken, to be minimal. Transportation projects scheduled from 2011-2014 would not be affected, and should be able to continue as planned. Note that final action on the Plan for PM-10 is not likely to occur before January 2011. If a final disapproval does issue, the time lag for imposition of new facility permitting requirements (18 months later, if the Plan's deficiencies are not corrected) and highway funding restrictions (24 months later) should be sufficient to allow the air quality agencies to fix the Plan. Even if funding restrictions do occur, no transportation dollars are withheld or lost to the State. Rather, the money must be spent on a more limited set of projects until the issues are resolved.

As in the past, EPA will continue to provide policy guidance and technical expertise to the State and local agencies so that a new, replacement Plan can be submitted as soon as possible. We are confident that working together we can find a way to protect air quality and avoid adverse economic impacts for the citizens of Arizona.

Thank you for the opportunity to respond to your concerns. If I can be of further assistance, please contact me at 415-947-8702, or have your staff contact my Congressional Liaison, Brent Maier, at 415-947-4256.

Sincerely,

Jared Blumenfeld

Congress of the United States

Washington, DC 20515

October 4, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

As Members of Congress representing water users throughout western and rural areas of the United States, we write to express concern with EPA's proposed permit requirement governing the use of aquatic pesticides. Irrigation districts throughout the West rely on the responsible use of aquatic herbicides in accordance with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) label requirements to control the growth of weeds that threaten the delivery of water to our nation's farms.

EPA's proposal would require irrigation districts to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit program. As defined by the Clean Water Act, NPDES permits are required for point source pollutants discharged into waters of the United States. However, Congress specifically exempted irrigated agriculture return flow from meeting the definition of a "point source" in order to keep western irrigators on a level playing field with farmers in the east. The use of aquatic herbicides on or near irrigation canals and ditches is historically protected by this exemption as it is essential to maintaining return flow.

Importantly, EPA's proposal was issued in response to a 2009 Sixth Circuit Court of Appeals decision (*National Cotton Council, et al. v. EPA*) that did not address the definition of a point source or the application of the return flow exemption to irrigation district use, but only interpreted the definition of a "pollutant." Regardless of whether irrigation district herbicide use under FIFRA would now meet the court's definition of a pollutant, it is not a "point source" as prescribed by the Clean Water Act and NPDES permitting should not be required. Additionally, manmade irrigation systems do not necessarily meet the definition of "waters of the United States", further suggesting district herbicide use should not fall under the NPDES umbrella.

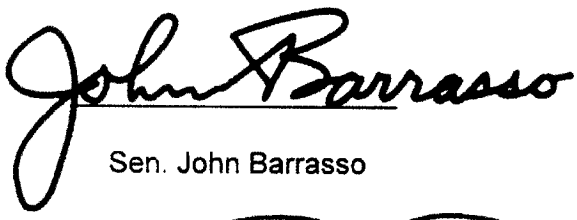
In practice, the proposed permit process would impose significant new costs on states and irrigation districts at a time when they simply cannot afford additional expense. EPA's proposal would require significant site monitoring, record keeping, and annual reporting, which is unnecessary to ensure environmental protection given that irrigation districts already act in a responsible manner under FIFRA guidelines.

We caution you that EPA's proposal is poorly timed and unnecessary to comply with the court's decision as it relates to the use of aquatic herbicides by irrigation districts. For the above mentioned reasons, we strongly urge you to delay adoption of the proposed general permit.

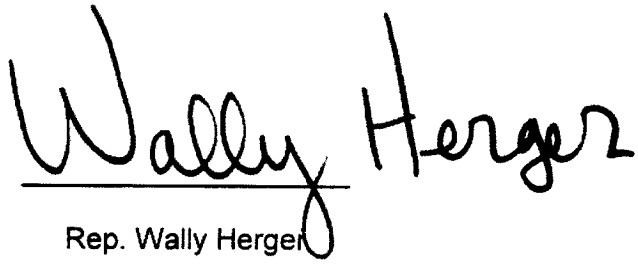
Sincerely,

Sen. Mike Crapo

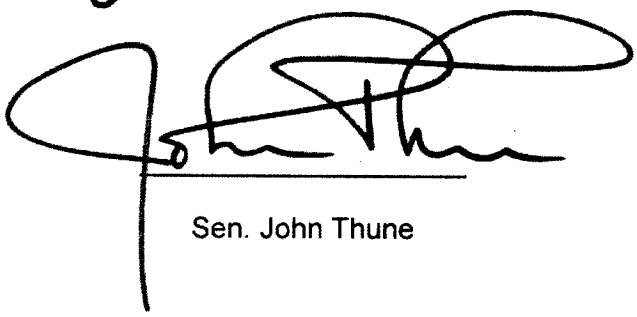
Rep. Rob Bishop



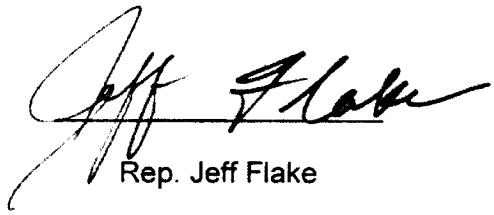
Sen. John Barrasso



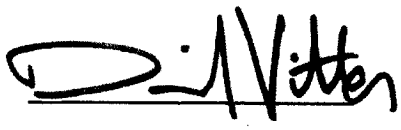
Rep. Wally Herger



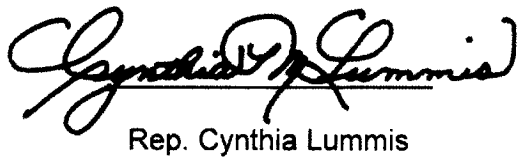
Sen. John Thune



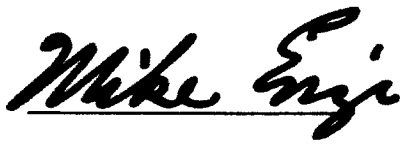
Rep. Jeff Flake



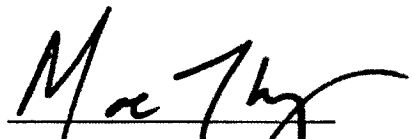
Sen. David Vitter



Rep. Cynthia Lummis



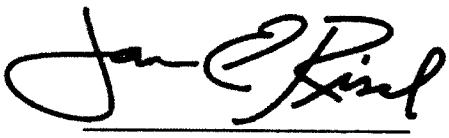
Sen. Michael Enzi



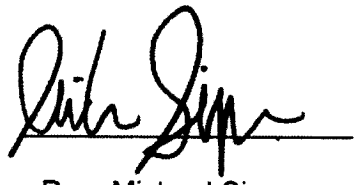
Rep. Mac Thornberry

Sen. Mike Johanns

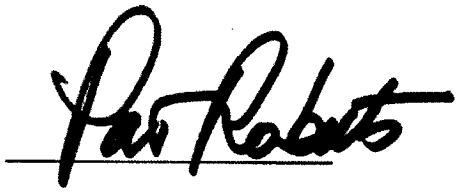
Rep. Jason Chaffetz



Sen. James Risch



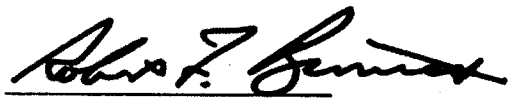
Rep. Michael Simpson



Sen. Pat Roberts

Rep. Doug Lamborn

Sen. Orrin Hatch



Sen. Robert Bennett

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 1 0 2010

OFFICE OF
WATER

The Honorable Jeff Flake
United States House of Representatives
Washington, DC 20515

Dear Congressman Flake:

Thank you for your October 4, 2010, letter to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding EPA's ongoing development of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) Pesticides General Permit (PGP). Your letter raises several questions about the PGP's applicability to irrigation systems.

Your letter raises concern that discharges resulting from herbicide application to irrigation systems should not require NPDES permits because they fall within the Clean Water Act's (CWA) statutory exemption for irrigation return flow and thus are not "point sources." I want to emphasize that your letter is correct in recognizing that irrigation return flow (which includes *runoff* from a crop field due to irrigation of that field) does not require NPDES permits, as exempted by the CWA. NPDES permits are required, however, for *point source discharges* from the application of pesticides, which includes applications of herbicides, into waters of the United States. The Sixth Circuit Court of Appeals in *National Cotton Council, et al. v. EPA*, decided that pesticide discharges (either from biological or chemical pesticides that leave a residue) are point source discharges of pollutants and require an NPDES permit.

Secondly, your letter recognizes that manmade irrigation ditches do not necessarily meet the definition of waters of the United States and, therefore, would not require an NPDES permit. We agree that many irrigation ditches are not waters of the United States or conveyances to waters of the United States, and thus, would not require NPDES permit coverage. EPA continues to rely on 2008 guidance clarifying the circumstances for when ditches are or are not waters of the U.S. following the Supreme Court decisions in ***SWANCC*** and ***Rapanos,*** under which ditches that do not contain at least seasonal flow are generally not considered waters of the US.

Lastly, you stated that compliance with the PGP would impose significant expense on states and irrigation districts when the permit requirements are unnecessary to protect the environment because the irrigation districts are meeting Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) guidelines. Since the Sixth Circuit Court's decision, EPA has been working closely with states (as co-regulators) and other stakeholders (e.g., numerous industry and environmental groups) to develop an NPDES

general permit that will provide pesticide applicators with the least burdensome option for complying with the Court's decision and the CWA's statutory requirements. Working with these states and stakeholders provided EPA with the information necessary to develop a permit that minimizes the burden, while offering the environmental protection measures required under the CWA. EPA proposed its draft PGP on June 4, 2010, and accepted comments through July 19, 2010. It is important to note that without the availability of a general permit for such discharges, pesticide applicators would have to obtain coverage under individual NPDES permits, which generally involve a more extensive application process and typically take longer to obtain.

EPA agrees that irrigation districts may already comply with FIFRA labeling requirements. The decision in *National Cotton Council,* however, clarified that these provisions are separate from what is required under the CWA and its implementing regulations. The draft PGP does require additional measures for protecting the environment beyond the FIFRA label; however, they are actions that most users of pesticides that are currently discharging to waters of the United States, are already implementing as best management practices. We have conducted extensive costing and economic analyses which conclude minimal burden to the applicator industry associated with the PGP. EPA developed this permit with the goal of avoiding undue regulatory burden upon pesticide applicators; of not including redundant requirements from those already in effect under existing laws, regulations, and permits; and providing a legally defensible permit that implements the required CWA statutory and regulatory protections for discharges resulting from application of pesticides.

In addition to working on the final EPA permit, as we stated above, we are also working closely with states to assist them in developing new state permits to be in place by the April 9, 2011, court deadline. Thank you again for sharing your concerns with us. If you have further questions, please contact me or your staff may call Greg Spraul in EPA's Office of Congressional and Intergovernmental Relations at (202) 564- 0255.

Sincerely,

Peter S. Silva
Assistant Administrator

JEFF FLAKE
6TH DISTRICT, ARIZONA

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Congress of the United States
House of Representatives

March 9, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson,

I appreciate your recent testimony before the House Interior and Environment Appropriations Subcommittee and I write to follow up on our exchange regarding Spill Prevention, Control and Countermeasure (SPCC) regulations.

Let me say from the outset that I should have corroborated the media item describing the EPA's actions before questioning you on the topic. There were notable inaccuracies, as you correctly pointed out.

That said, there appears to be some confusion related to the issue. While the EPA has delayed compliance requirements, the agency has yet to finalize a rule providing an exemption for milk containers under the spill prevention regulations. I was pleased to learn from your testimony that the agency is taking steps to move the process along. However, two years should be sufficient time to complete the rule. Like many in the regulated community, I take little for granted until a final rule is published. I look forward to being notified when the process has been completed.

In closing, you seemed to indicate in your response to my questions that providing the exemption could be considered a regulatory "underreach," as opposed to the regulatory overreaching with which the agency has become synonymous of late. It would seem that ensuring that unnecessary and costly regulations are avoided is simply commonsense, commonsense that the regulated community and taxpayers could benefit from in any number of the agency's other regulatory efforts.

Sincerely,

JEFF FLAKE
Member of Congress

JEFF FLAKE
6TH DISTRICT, ARIZONA

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VICE CHAIRMAN

Congress of the United States
House of Representatives

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NATIONAL PARKS, FORESTS, AND PUBLIC LANDS

Fax Cover Page
From 202-226-4386

Date: 3/9/11

To: The Honorable Lisa Jackson

From:

- [X] Rep. Jeff Flake
- [ ] Matthew Specht
- [ ] Susan Kachouroff
- [ ] Nikki Bullock
- [X] Chandler Morse (STAFF)
- [ ] Chance Hammock
- [ ] Sarah Krug
- [ ] Genevieve Frye
- [ ] Megan Runyan
- [ ] Jason Samuels
- [ ] Colleen Gilbert
- [ ] Intern

Numbers of Pages (including cover sheet) 2

Remarks:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 4 2011

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Jeff Flake
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Flake:

Thank you for your letter of March 9, 2011, to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson, in which you requested to be notified when the process for finalizing a rule exempting milk containers from the oil Spill Prevention Control and Countermeasure (SPCC) regulations is complete. I appreciate your interest in this important issue.

EPA is working on a final action designed to exempt milk and milk product containers from the SPCC regulations. The final rule is currently undergoing interagency review and we expect the rule to be issued in early spring 2011. Also, on October 7, 2010, EPA delayed the SPCC compliance date by which a facility must address milk and milk product containers, associated piping and appurtenances one year from the effective date of the above referenced milk rule.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Raquel Snyder, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586.

Sincerely,

Mathy Stanislaus
Assistant Administrator

Congress of the United States
Washington, DC 20515

April 14, 2011

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army
for Civil Works
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Dear Administrator Jackson and Assistant Secretary Darcy:

In December 2010, the Environmental Protection Agency and Corps of Engineers (collectively, the "Agencies") sent draft "Clean Water Protection Guidance" to the Office of Management and Budget for regulatory review. The intent of the document is to describe how the Agencies will identify waters subject to jurisdiction under the Federal Water Pollution Control Act of 1972 (more commonly known as the "Clean Water Act") and implement the U.S. Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (*SWANCC*) and *United States v. Rapanos* (*Rapanos*) concerning the extent of waters covered by the Act. Further, this document would supersede guidance that the Agencies previously issued in 2003 and 2008 on determining the scope of "waters of the United States" subject to Clean Water Act programs.

In our view, this "Guidance" goes beyond clarifying the scope of "waters of the United States" subject to Clean Water Act programs. Rather, it is aimed, as even the Agencies acknowledge, at "increas[ing] significantly" the scope of the Clean Water Act's jurisdiction over more waters and more provisions of the Clean Water Act as compared to practices under the currently applicable 2003 and 2008 guidance. ("Guidance," at 1.)

It appears that the Agencies intend to expand the applicability of this "Guidance" beyond section 404 to all other Clean Water Act provisions that use the term "waters of the United States," including sections 402, 401, 311, and 303. Moreover, the Agencies intend to "alleviate the need to develop extensive administrative records for certain jurisdictional determinations" ("Guidance," at 1), thereby shifting the burden of proving the jurisdictional status of a "water" from the Agencies to the regulated community, and thus making the provisions of this "Guidance" binding on the regulated community.

In light of the substantive changes in policy that the Administration is considering with this "Guidance," we are extremely concerned that this "Guidance" amounts to a *de facto* rule instead of mere advisory guidelines. Additionally, we fear that this "Guidance" is an attempt to

short-circuit the process for changing agency policy and the scope of Clean Water Act jurisdiction without following the proper, transparent rulemaking process that is dictated by the Administrative Procedure Act.

This "Guidance" would substantively change the Agencies' policy on waters subject to jurisdiction under the Clean Water Act; undermine the regulated community's rights and obligations under the Clean Water Act; and erode the Federal-State partnership that has long existed between the States and the Federal Government in implementing the Clean Water Act. By developing this "Guidance," the Agencies have ignored calls from state agencies and environmental groups, among others, to proceed through the normal rulemaking procedures, and have avoided consulting with the States, which are the Agencies' partners in implementing the Clean Water Act.

The Agencies cannot, through guidance, change the scope and meaning of the Clean Water Act or the statute's implementing regulations. If the Administration seeks statutory changes to the Clean Water Act, a proposal must be submitted to Congress for legislative action. If the Administration seeks to make regulatory changes, a notice and comment rulemaking is required.

We are very concerned by the action contemplated by the Agencies, and we strongly urge you to reconsider the proposed "Guidance."

Thank you for your attention to this matter.

Sincerely,

Bob Gibbs
Member of Congress

Tim Holden
Member of Congress

John Mica
Member of Congress

Nick Rahall
Member of Congress

Sanford Bishop
Member of Congress

David McKinley
Member of Congress

Mac Thornberry
Member of Congress

Walter Jones
Member of Congress

Jeff Landry
Member of Congress

John Carter
Member of Congress

Pete Olson
Member of Congress

Wally Herger
Member of Congress

Raúl Labrador
Member of Congress

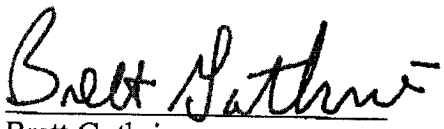
Michael Conaway
Member of Congress

James Lankford
Member of Congress

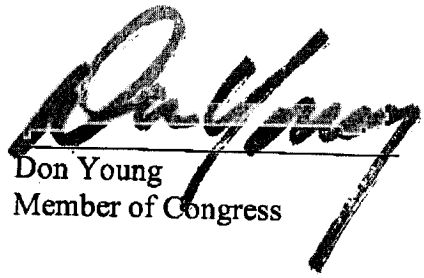
Jeff Flake
Member of Congress

Shelley Moore Capito
Member of Congress

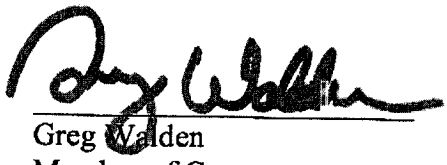
Gary Miller
Member of Congress



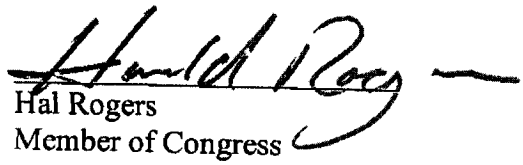
Brett Guthrie
Member of Congress



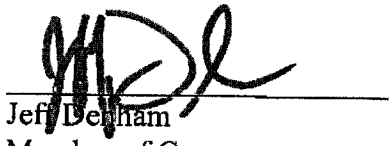
Don Young
Member of Congress



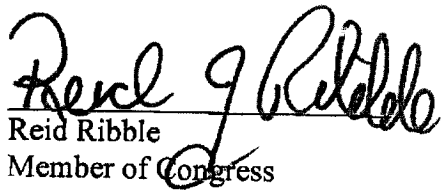
Greg Walden
Member of Congress



Hal Rogers
Member of Congress

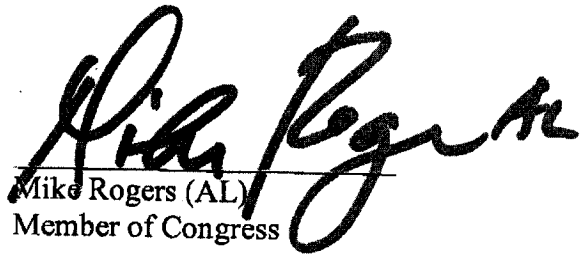


Jeff Denham
Member of Congress

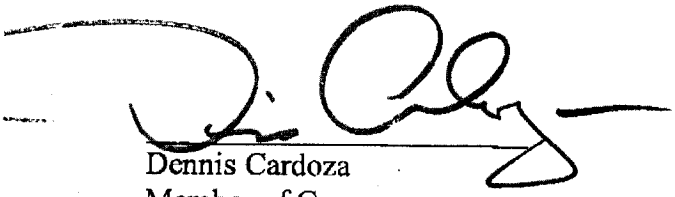


Reid Ribble
Member of Congress

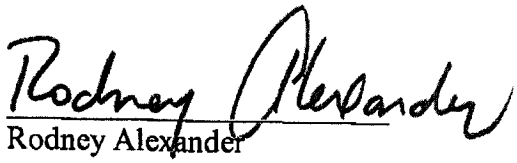
Cathy McMorris Rodgers
Member of Congress



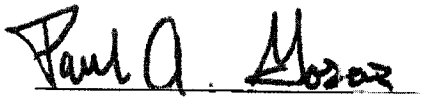
Mike Rogers (AL)
Member of Congress



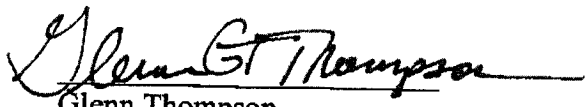
Dennis Cardoza
Member of Congress



Rodney Alexander
Member of Congress



Paul Gosar
Member of Congress



Glenn Thompson
Member of Congress

Steve King
Member of Congress

Francisco Canseco
Member of Congress

Sam Graves
Member of Congress

Bill Shuster
Member of Congress

Tim Murphy
Member of Congress

Chip Cravaack
Member of Congress

Collin Peterson
Member of Congress

Ed Whitfield
Member of Congress

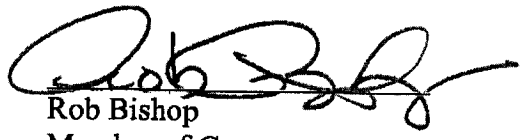
Steve Womack
Member of Congress

Bill Johnson
Member of Congress

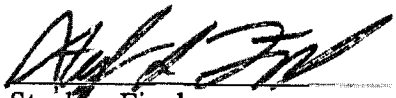
Rick Crawford
Member of Congress

Mike Simpson
Member of Congress

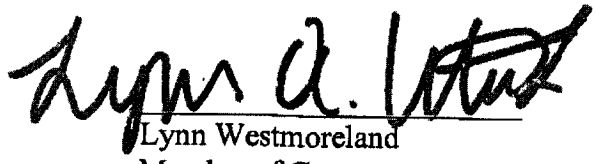
Tom Marino
Member of Congress



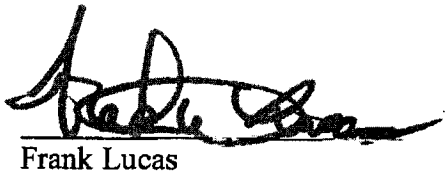
Rob Bishop
Member of Congress



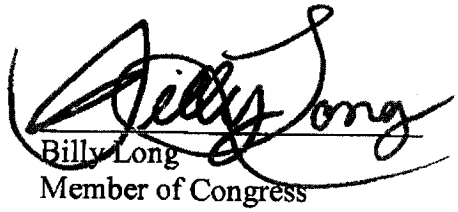
Stephen Fincher
Member of Congress



Lynn Westmoreland
Member of Congress



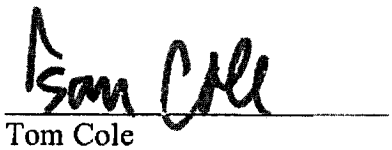
Frank Lucas
Member of Congress



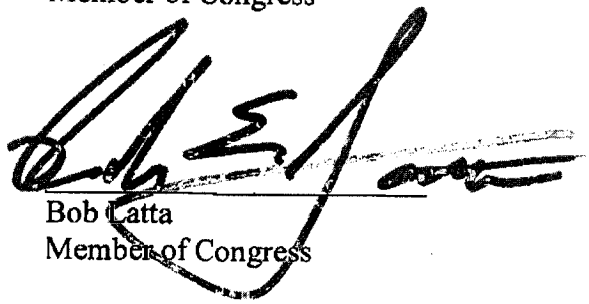
Billy Long
Member of Congress

Adam Kinzinger
Member of Congress

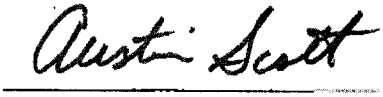
Jaime Herrera Beutler
Member of Congress



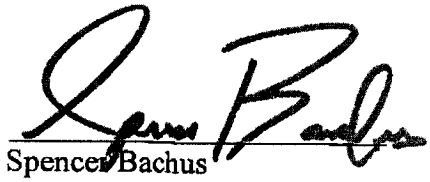
Tom Cole
Member of Congress



Bob Latta
Member of Congress



Austin Scott
Member of Congress



Spencer Bachus
Member of Congress

Blaine Luetkemeyer
Member of Congress

Cory Gardner
Member of Congress

Adrian Smith
Member of Congress

John Shimkus
Member of Congress

Kristi Noem
Member of Congress

Leonard Boswell
Member of Congress

Jim Renacci
Member of Congress

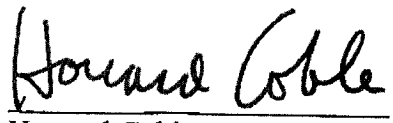
Renee Ellmers
Member of Congress

Kay Granger
Member of Congress

Heath Shuler
Member of Congress

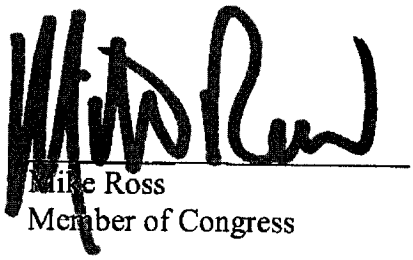
Mike Coffman
Member of Congress

Jean Schmidt
Member of Congress



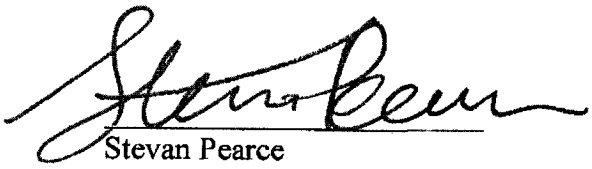
Howard Coble
Member of Congress

Lou Barletta
Member of Congress

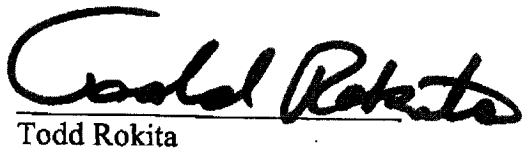


Mike Ross
Member of Congress

John Culberson
Member of Congress

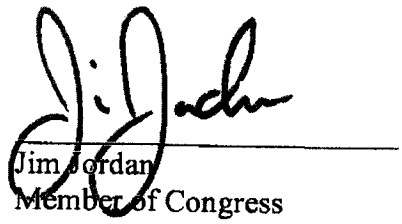


Stevan Pearce
Member of Congress

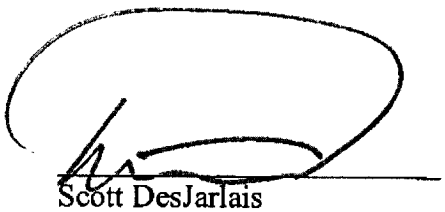


Todd Rokita
Member of Congress

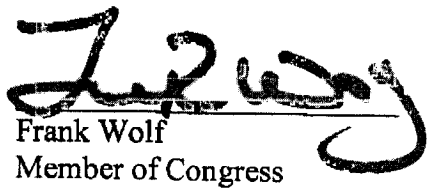
Steve Chabot
Member of Congress



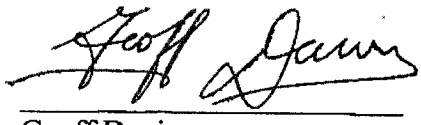
Jim Jordan
Member of Congress



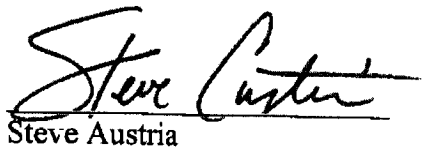
Scott DesJarlais
Member of Congress



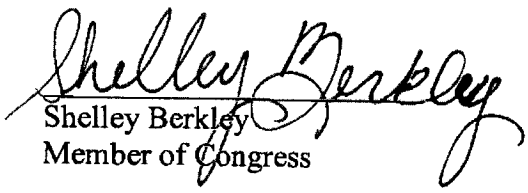
Frank Wolf
Member of Congress



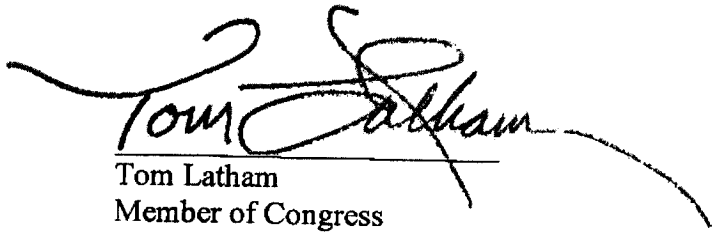
Geoff Davis
Member of Congress



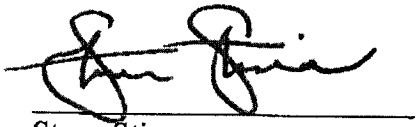
Steve Austria
Member of Congress



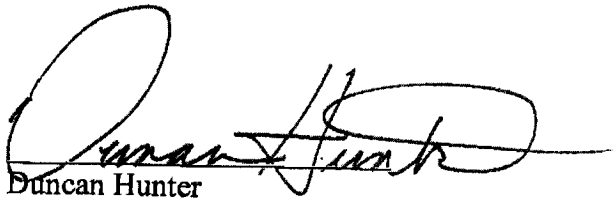
Shelley Berkley
Member of Congress



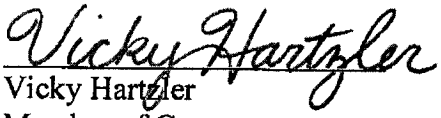
Tom Latham
Member of Congress



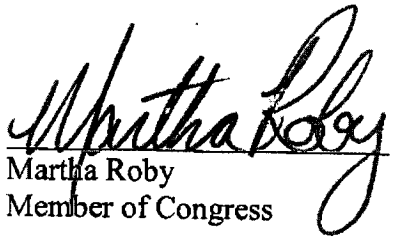
Steve Stivers
Member of Congress



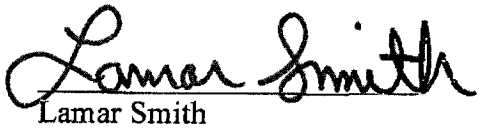
Duncan Hunter
Member of Congress



Vicky Hartzler
Member of Congress



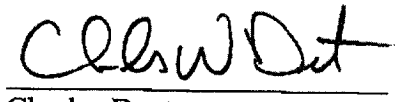
Martha Roby
Member of Congress



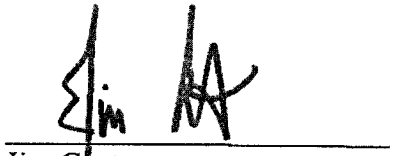
Lamar Smith
Member of Congress

Mo Brooks
Member of Congress

Steve Southerland
Member of Congress



Charles Dent
Member of Congress



Jim Costa
Member of Congress

Terri Sewell
Member of Congress

Tom Rooney
Member of Congress

John Barrow
Member of Congress

Jo Ann Emerson
Member of Congress

Todd Platts
Member of Congress

Charles Boustany
Member of Congress

Roscoe Bartlett
Member of Congress

Robert Aderholt
Member of Congress

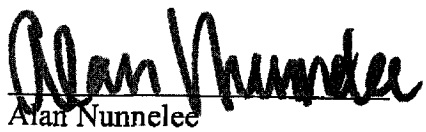
Lynn Jenkins
Member of Congress

Cynthia Lummis
Member of Congress

Pat Tiberi
Member of Congress

Mark Critz
Member of Congress

Lee Terry
Member of Congress

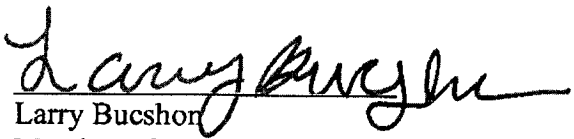


Alan Nunnelee
Member of Congress

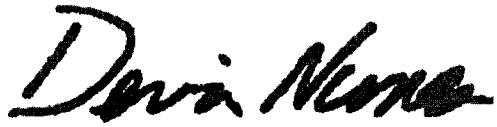
Tim Griffin
Member of Congress

Randy Neugebauer
Member of Congress

Dan Boren
Member of Congress

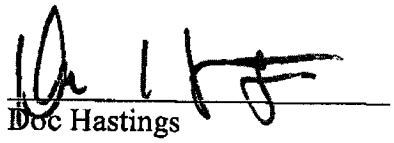


Larry Bucshon
Member of Congress



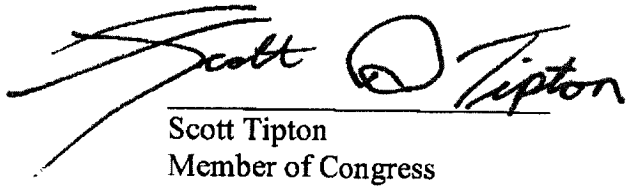
Devin Nunes
Member of Congress

Diane Black
Member of Congress

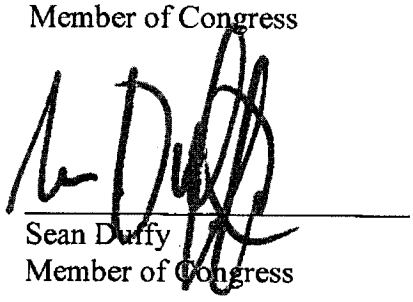


Doc Hastings
Member of Congress

Phil Roe
Member of Congress

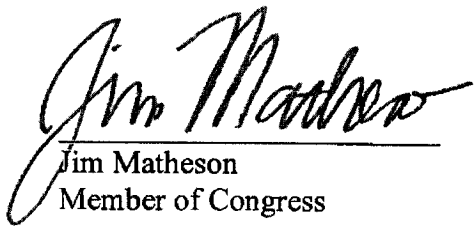


Scott Tipton
Member of Congress



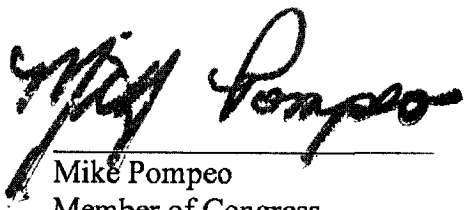
Sean Duffy
Member of Congress

Jason Altmire
Member of Congress

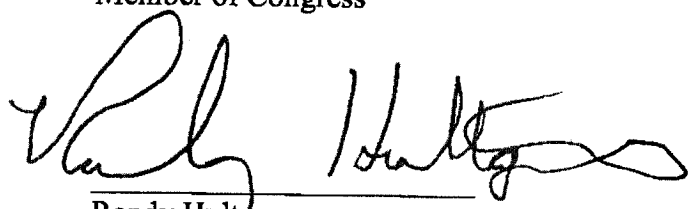


Jim Matheson
Member of Congress

Bobby Schilling
Member of Congress

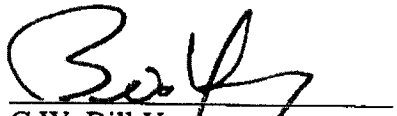


Mike Pompeo
Member of Congress

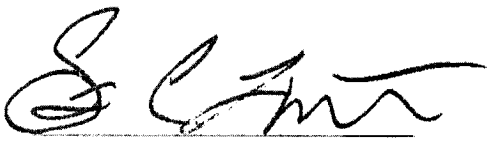


Randy Hultgren
Member of Congress

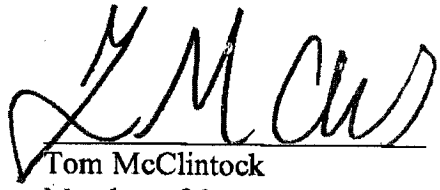
Chuck Fleischmann
Member of Congress



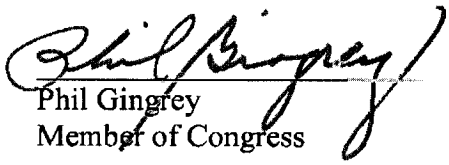
C.W. Bill Young
Member of Congress



Steve LaTourette
Member of Congress

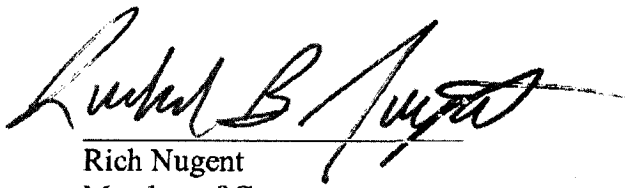


Tom McClintock
Member of Congress

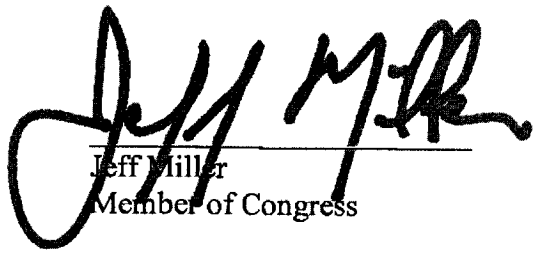


Phil Gingrey
Member of Congress

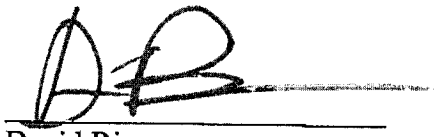
Ben Chandler
Member of Congress



Rich Nugent
Member of Congress

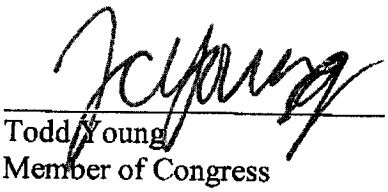


Jeff Miller
Member of Congress

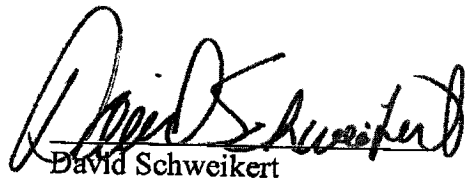


David Rivera
Member of Congress

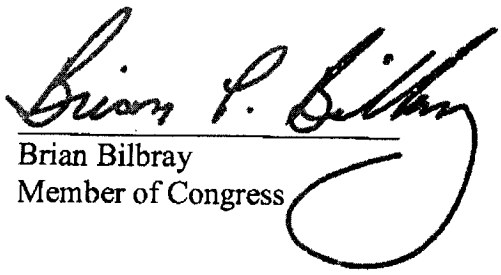
Ileana Ros-Lehtinen
Member of Congress



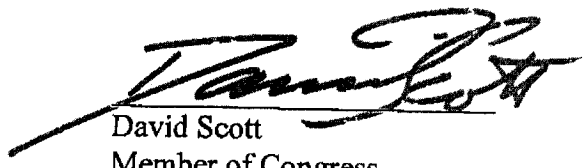
Todd Young
Member of Congress



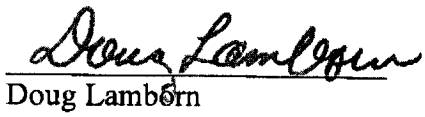
David Schweikert
Member of Congress



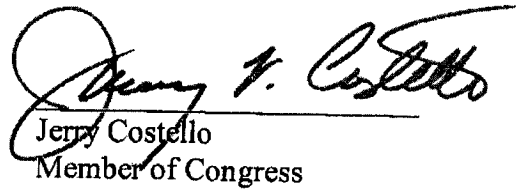
Brian Bilbray
Member of Congress



David Scott
Member of Congress

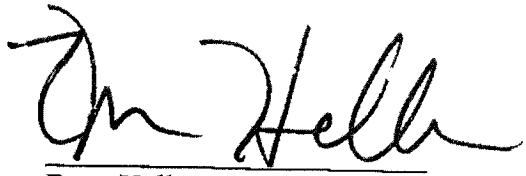


Doug Lamborn
Member of Congress

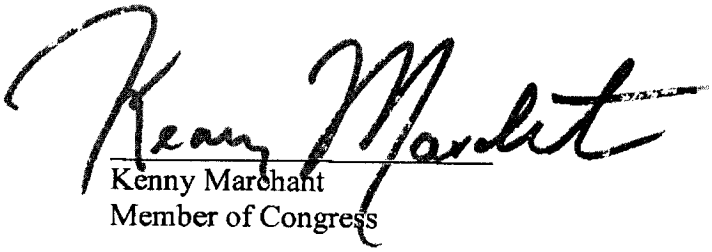


Jerry Costello
Member of Congress

Marsha Blackburn
Member of Congress

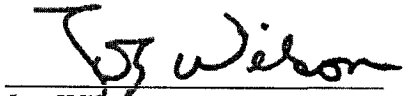


Dean Heller
Member of Congress



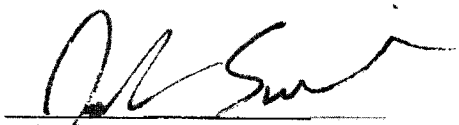
Kenny Marchant
Member of Congress

Ken Calvert
Member of Congress

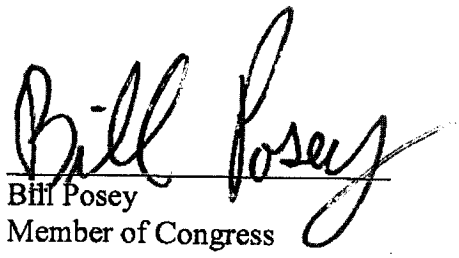


Joe Wilson
Member of Congress

Mike McIntyre
Member of Congress

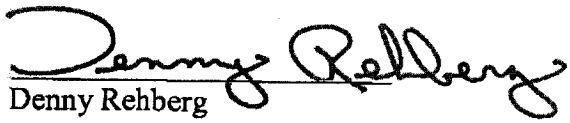


John Sullivan
Member of Congress

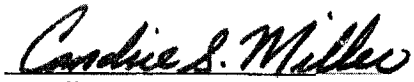


Bill Posey
Member of Congress

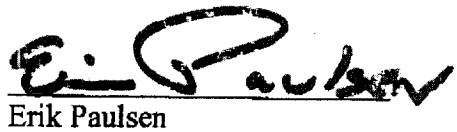
Bill Flores
Member of Congress



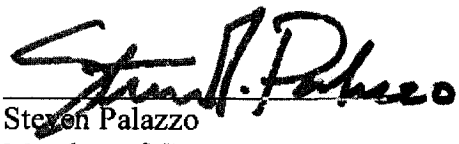
Denny Rehberg
Member of Congress



Candice Miller
Member of Congress

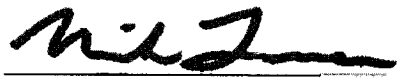


Erik Paulsen
Member of Congress

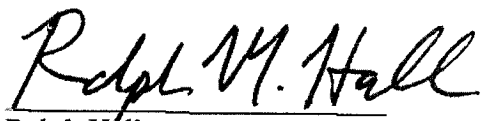


Steven Palazzo
Member of Congress

Bill Owens
Member of Congress



Michael Turner
Member of Congress



Ralph Hall
Member of Congress

Sandy Adams
Member of Congress

Ann Marie Buerkle
Member of Congress

Dan Benishek
Member of Congress

Robert Hurt
Member of Congress

Bill Cassidy
Member of Congress

Patrick McHenry
Member of Congress

Aaron Schock
Member of Congress

Bob Goodlatte
Member of Congress

John Kline
Member of Congress

NY-23
Tom Reed
Member of Congress

Mario Diaz-Balart
Member of Congress

Jeff Duncan
Member of Congress

John J Duncan Jr.
Member of Congress

Blake Farenthold
Member of Congress

Buck McKeon
Member of Congress

Richard Hanna
Member of Congress

Ben Quayle
Member of Congress

Joe Donnelly
Member of Congress

Larry Kissell
Member of Congress

Steve Scalise
Member of Congress

CC:
Nancy Sutley, Chair, White House Council on Environmental Quality (CEQ)
Cass Sunstein, Administrator, Office of Information and Regulatory Affairs (OIRA), OMB

JUL 2 0 2011

The Honorable Jeff Flake
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Flake:

Thank you for your letter of April 14, 2011, to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson and the U.S. Department of the Army Assistant Secretary (Civil Works) JoEllen Darcy regarding draft guidance clarifying the definition of "waters of the United States." I understand your interest in the significant issues associated with the geographic scope of the Clean Water Act (CWA), which are so central to the agencies' mission of assuring effective protection for human health and water quality for all Americans. We appreciate the opportunity to respond to your letter.

Recognizing the importance of clean water and healthy watersheds to our economy, environment, and communities, on April 27, 2011, EPA and the U.S. Army Corps of Engineers (Corps) released draft guidance that would update existing policies on where the CWA applies. We want to emphasize that this guidance was issued in draft and is not in effect. The agencies published the draft guidance in the *Federal Register* on May 2, 2011, and are requesting public comment until July 31, 2011. The guidance will not be made final until the after the comment period has closed and any revisions are made after careful consideration of all public input.

It is also important to clarify that the draft guidance would not change existing requirements of the law nor substantially increase the geographic scope of waters subject to protection under the CWA. The extent of waters covered by the Act remains significantly less than the scope protected under the law prior to Supreme Court decisions in *SWANCC* and *Rapanos,* and the agencies' guidance cannot change that. We believe that guidance will be helpful in providing needed improvements in the consistency, predictability, and clarity of procedures for conducting jurisdictional determinations, without changing current regulatory or statutory requirements, and consistent with the relevant decisions of the Supreme Court.

We share your interest in proceeding with an Administrative Procedure Act rulemaking as soon as possible to modify the agencies' regulatory definition of the term "waters of the United States" to reflect the Supreme Court decisions in *SWANCC* and *Rapanos.* Rulemaking assures an additional opportunity for the states, the public, and stakeholders to provide comments on the scope and meaning of this key regulatory term. EPA and the Corps hope to publish a Notice of Proposed Rulemaking on potential regulatory changes later this year.

Clean water provides critical health, economic, and livability benefits to American communities. Since 1972, the CWA has kept billions of pounds of pollution out of American waters, and has doubled the number of waters that meet safety standards for swimming and fishing. Despite the dramatic progress in restoring the health of the Nation's waters, an estimated one-third of American waters still do not meet the swimmable and fishable goals of the Clean Water Act. Additionally, new pollution and development challenges threaten to erode our gains, and demand innovative and strong action in partnership with Federal agencies, states, and the public to ensure clean and healthy water for American families, businesses, and communities. EPA and the Corps look forward to working with the public, our federal and state partners, and Congress to protect public health and water quality, and promote the nation's energy and economic security.

We appreciate the opportunity to respond to your letter. We hope you will feel free to contact us if you have additional questions or concerns, or your staff may call Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836 or Chip Smith in the Office of the Assistant Secretary (Civil Works) at (703) 693-3655.

Sincerely,

Nancy K. Stoner
Acting Assistant Administrator
U.S. Environmental Protection Agency

JoEllen Darcy
Assistant Secretary (Civil Works)
U.S. Department of the Army

ROBERT E. LATTA
5TH DISTRICT, OHIO

ASSISTANT MAJORITY WHIP

VICE CHAIRMAN
CONGRESSIONAL SPORTSMEN'S CAUCUS

COMMITTEE ON
ENERGY AND COMMERCE
SUBCOMMITTEE ON
COMMUNICATIONS AND TECHNOLOGY

SUBCOMMITTEE ON HEALTH

SUBCOMMITTEE ON
ENVIRONMENT AND THE ECONOMY

Congress of the United States
House of Representatives
Washington, DC 20515–3505

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11 EAST MAIN STREET
NORWALK, OH 44857
(419) 668-0206

May 10, 2011

The Honorable Lisa Jackson
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express our deep concern with EPA's continuing, questionable, regulatory actions in implementing the "Lead: Renovation, Repair and Painting Rule" (LRRP). Following EPA's flawed implementation of the original rule last year that resulted in too few certified contractors, lack of training opportunities, poor consumer education and inaccurate lead test kits, the agency went on to remove a provision of the rule to allow consumers to opt-out of the rule if there were no pregnant women or children under six present in pre-1978 housing, effectively increasing the number of homes subject to the rule from 38 million to 79 million. Now, EPA is undertaking two more regulatory actions to expand the scope and compliance requirements of the LRRP well beyond the scope and intent of the original rule.

The first of the two actions is the current proposed final rule to institute "Clearance Testing" to ensure that renovation work areas are adequately cleaned after certain renovation work is completed, even though EPA has not demonstrated that the current requirements are deficient and that the additional requirements are necessary. These expensive, disruptive multiple dust wipe tests would have to be done through EPA-accredited labs after every renovation is completed. In addition, depending on the type of renovation work, the new rule would require ensuring that the renovation work areas (and adjacent areas) meet stringent abatement clearance standards not applicable to LRRP activities before a homeowner can even reoccupy the area. Practically speaking, this makes every home renovation and window and door replacement covered by the rule a potential costly abatement, not a renovation, without proven benefit. That is not the intent of the LRRP.

Overall, we have several concerns about this proposal, including: EPA lacks the authority under the Toxic Substances Control Act (TSCA) to impose dust wipe testing or clearance requirements on renovators; EPA's proposal is inconsistent with TSCA because it eliminates the distinction between lead abatement activities and renovation work; clearance testing results would make contractors liable for any lead present in a home, even outside renovation work areas; the cost of the rule would far outweigh any possible

benefits; EPA's has failed to provide any data or circumstances to justify the proposed expansion of the LRRP Rule; home renovations, especially energy efficient improvements will needlessly be discouraged and in many cases simply not done; and the regulatory burden will become so great that many renovators will simply not perform renovations in pre-1978 homes, and that the lack of firms willing to perform such renovations will only increase costs further.

Our concern is heightened more by EPA's intent to further expand the rule when it has failed to properly implement current provisions of it. EPA has significantly failed in implementing the current provisions by essentially waiving the requirements that pre-renovation test kits must meet EPA's accuracy criteria by September 1, 2010. To date, no such kits are available yet much of the rule was predicated on this measure being met and worse, meaning many homeowners will needlessly incur the additional renovation costs of complying with this rule triggered only because of inaccurate test kits and not because of the presence of lead based paint at EPA's regulated levels. EPA has not been responsive in addressing this serious matter.

In addition, EPA's proposed expansion comes after already expanding the original rule in July 2010 by removing the "Opt-out" provision from the original rule no longer allowing homeowners to waive compliance with the rule if there were no pregnant women or children under six present. By EPA's estimates alone, that action increased compliance costs by $336 million in this first year, without EPA citing any new data to support its decision.

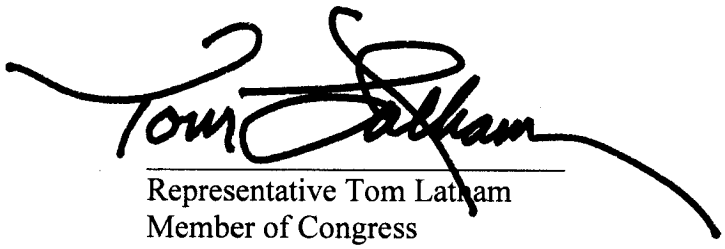
In addition to the proposed expansion of LRRP to include clearance testing, EPA has also taken the initial steps to extend the rule to commercial and public buildings—even though Congress only granted EPA authority to issue *guidelines* for work practices applicable to RRP activities in these buildings. We are very concerned that an expansion of the LRRP to public and commercial buildings would unduly discourage needed building improvements in these buildings, increase costs unnecessarily in both the private and public sectors and hinder job creation in the depressed commercial construction market.

For these reasons we strongly urge that EPA not approve a final rule requiring additional, onerous clearance and dust wipe testing under the LRRP because they have not been justified and EPA's authority to do so is questionable. We also strongly urge that EPA not move forward with a proposed rule to expand the scope of the LRRP to include public and commercial buildings for the same reasons.

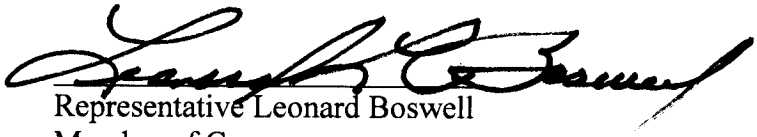
Sincerely,

Representative Robert Latta
Member of Congress

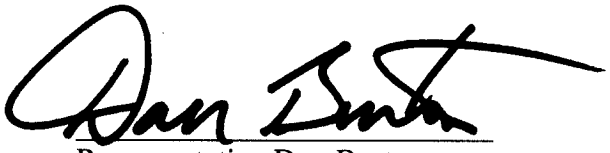
Representative Austin Scott
Member of Congress



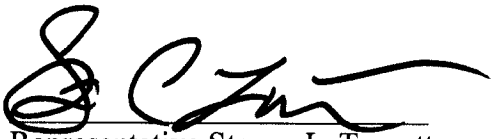
Representative Tom Latham
Member of Congress



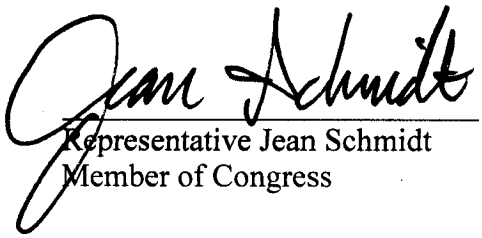
Representative Leonard Boswell
Member of Congress



Representative Dan Burton
Member of Congress



Representative Steven LaTourette
Member of Congress



Representative Jean Schmidt
Member of Congress

Representative Collin Peterson
Member of Congress

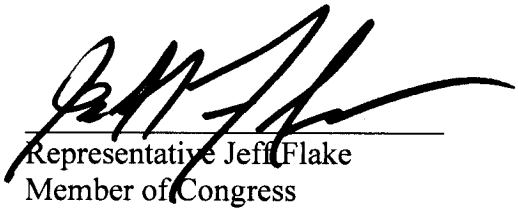
Representative John Kline
Member of Congress

Representative Dennis Rehberg
Member of Congress

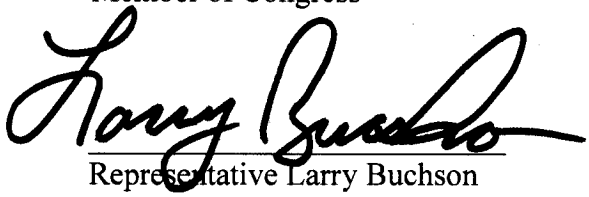
Representative Kenny Marchant
Member of Congress

Representative Louie Gohmert
Member of Congress

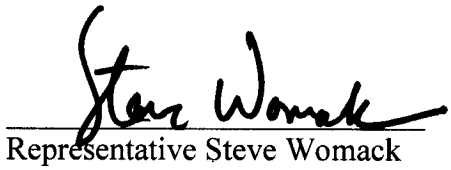
Representative Lynn Westmoreland
Member of Congress



Representative Jeff Flake
Member of Congress



Representative Larry Buchson
Member of Congress



Representative Steve Womack
Member of Congress

Representative Marsha Blackburn
Member of Congress

Representative Mike Simpson
Member of Congress

Representative Rick Berg
Member of Congress

Representative Mick Mulvaney
Member of Congress

Representative John Sullivan
Member of Congress

Representative Adrian Smith
Member of Congress

Representative Michele Bachmann
Member of Congress

cc: Cass Sunstein, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 22 2011

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Jeff Flake
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Flake:

Thank you for your letter of May 10, 2011, to the U.S. Environmental Protection Agency (EPA) about EPA's 2008 Lead Renovation, Repair, and Painting Rule (RRP rule), and the Agency's efforts regarding the renovation of public and commercial buildings.

As you are aware, Congress directed EPA to develop training and certification requirements for lead activities, including renovations, as part of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Title X"). EPA issued the RRP rule in 2008, and it became fully effective in April 2010. The rule provides simple, low-cost, common-sense steps contractors can take during their work to protect children and families from exposure to lead dust. These requirements are key to protecting all Americans and especially vulnerable populations, such as children and pregnant women, from the harmful effects of lead exposure.

Since the RRP rule became final, EPA and states have made significant progress in implementing its requirements, which will protect millions of children from exposure to lead-based paint during renovation activities. As of the end of May 2011, more than 660,000 renovation and remodeling contractors have been trained in lead-safe work practices, more than 88,000 firms have been certified, and more than 540 training providers have been accredited to provide training in lead-safe work practices.

Shortly after the final RRP rule was promulgated in 2008, several lawsuits were filed challenging the rule. These lawsuits (brought by industry representatives as well as environmental and children's health advocacy groups) were consolidated in the federal Circuit Court of Appeals for the District of Columbia Circuit. On August 26, 2009, EPA signed a settlement agreement with the environmental and children's health advocacy groups and shortly thereafter the industry representatives voluntarily dismissed their challenge to the rule.

The settlement agreement required EPA to propose changes to the RRP rule, including consideration of dust wipe testing. Accordingly, on April 22, 2010, EPA issued a Notice of Proposed Rulemaking (NPRM) under the authority of Section 402(c)(3) of the Toxic Substances Control Act to take public comments on the question of dust wipe testing. The NPRM was published in the Federal Register on May 6, 2010, opening a 60-day public comment period. At the request of several stakeholders, and because EPA recognized the importance of the issues raised by the NPRM, EPA extended the public comment period for an additional 30 days on July 7, 2010.

Commenters on the proposed rule raised a number of issues, including many of the issues described in your letter. EPA reviewed the more than 300 comments on the proposal and has carefully considered them in determining what final action on the proposal should be taken. A summary of these comments and EPA's responses will be made publicly available in the docket when the final rule is published.

With respect to the content or substance of the final action, the settlement agreement does not constrain the Agency's traditional discretion with respect to taking a final action on a proposal for rulemaking. Under the Administrative Procedure Act (APA) agencies have the discretion to make changes to what was proposed, provided that such changes are a "logical outgrowth" of the proposal. The settlement agreement does nothing to disturb this discretion under the APA.

The settlement agreement calls for EPA to take final action on the proposal by July 15, 2011. EPA intends to meet this deadline. The final rule is currently undergoing review by the Office of Management and Budget.

The settlement agreement also required EPA to fulfill the obligations Congress placed on the Agency in Title X, which required EPA to "revise the [abatement] regulations ... to apply the regulations to renovation or remodeling activities in ... public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards". With respect to renovations on the exterior of such buildings, the settlement agreement, as amended, provides that EPA must issue a proposal by June 15, 2012, and take final action on the proposal by February 15, 2014. In addition, EPA also agreed to determine whether hazards are created by renovations on the interiors of such buildings. For those interior renovations that create lead-based paint hazards, EPA agreed to issue a proposal by July 1, 2013, and take final action on the proposal no later than eighteen months after that.

As required by the settlement agreement and Federal law, EPA is currently developing a proposal to address exterior renovation jobs on public buildings constructed before 1978 and commercial buildings that, by virtue of their close proximity to residences and child-occupied facilities (i.e., buildings frequented by children under the age of six), create lead-based paint hazards. EPA is also organizing a Small Business Advocacy Review (SBAR) panel to provide input that will be used by EPA during the development of the proposed rule. SBAR panels are comprised of representatives from the agency conducting the rulemaking (EPA in this case), the Small Business Administration, and the Office of Management and Budget. The Panel will consult with small entities on cost and economic implications of these future regulations. The SBAR panel will also seek information from participants on the types of activities typically undertaken during the renovation of public and commercial buildings and alternative regulatory requirements. As part of the rulemaking process, EPA also assesses the costs and benefits of any regulation it is required by Congress to implement. EPA is still gathering information to inform the development of an assessment of costs and benefits of this future proposed rule.

EPA will take public comment on the proposal and will carefully consider the comments in determining what final action should be taken. The settlement agreement does not constrain the Agency's traditional discretion with respect to taking a final action on a proposal for rulemaking.

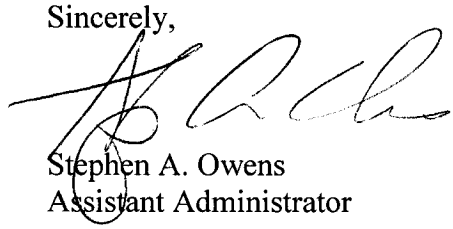
You also raise a question about available lead test kits. The preamble to the 2008 Lead Renovation, Repair, and Painting (RRP) Rule states that before September 1, 2010, lead test kits must meet only a

false negative performance criterion, and that recognition of kits that meet only this criterion will be acceptable until EPA publicizes the recognition of the first improved test kit that meets the false negative criterion and also a false positive criterion. However, there is no regulatory requirement that improved test kits that meet both criteria must be available.

Although EPA has evaluated four test kits submitted by manufacturers prior to September 1, 2010, none met both the false negative and false positive performance criteria. However, one kit met the false negative criterion only and was recognized by EPA on August 31, 2010. At this time, three test kits are recognized by EPA as meeting only the false negative criterion and may be used by homeowners and contractors to determine whether a home may be excluded from the requirements of the rule. The Agency therefore fulfilled its commitment stated in the 2008 RRP Rule to evaluate improved kits submitted by manufacturers.

Again, thank you for your letter. If you have additional questions or concerns, please contact me or your staff may contact Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,



Stephen A. Owens
Assistant Administrator

1077206

Congress of the United States
Washington, DC 20515

February 24, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President,

In the coming weeks, your Administration, led by the Environmental Protection Agency (EPA), will make a set of decisions about the future of Arizona's largest coal-fired power plant, the Navajo Generation Station (NGS). Although part of the decision relates to power generation and its potential impact on haze in the Grand Canyon, the outcome will also have a profound impact on the state and tribal economies as well as the supply of water which is of paramount concern to all of us in Arizona.

In August 2009, EPA began a formal review of the NGS in order to determine the Best Available Retrofit Technology for the plant. We agree that efforts to make progress toward the long-term goal of reducing haze in Class I areas are important. We also believe that it is possible to craft a rule that is in compliance with the Regional Haze rule without jeopardizing the health and well-being of the affected Tribes, the state economy, and critical water supplies.

The economic impacts of the options being considered will resonate throughout our state and could be especially devastating to the Navajo Nation and Hopi Tribe. It is our understanding that NGS, located on the Navajo Nation, and Kayenta Coal Mine, together provide jobs for over 1,000 employees, more than 80 percent of whom are Navajo. According to an Arizona State University study, NGS and the mine will indirectly account for more than $20 billion in Gross State Product for Arizona between 2011 and 2044, and contribute approximately 3,000 jobs annually.

We also urge you to consider the unique role that NGS has with respect to the Central Arizona Project (CAP), which supplies water to 80 percent of Arizona's population. NGS provides 95 percent of the power for the federally authorized CAP. It was an historic environmental compromise to protect the Grand Canyon and provide water for CAP that led to the construction of NGS. By statute, the United States has the largest single share of power output from NGS for the pumping of water by CAP.

We have been advised that a recently released study sponsored by the Department of the Interior, and conducted by the National Renewable Energy Lab, estimates that the cost of water will increase between 13 percent and 32 percent as a result of actions contemplated by EPA. We understand that the report notes that the increase will fall disproportionately on the Tribes and agricultural community. In lieu of paying for renewable water supplies provided by CAP, there is the risk that the agricultural consumers will return to the use of disappearing ground water supplies. This outcome would defeat the entire rationale for CAP, which still ranks as one of the largest reclamation projects in history.

Mr. President, we appreciate the opportunity to raise these issues. We ask that the Administration take these and other comments into consideration as it judiciously moves to develop a sound and reasonable solution for NGS.

Sincerely,

JEFF FLAKE
Member of Congress

ED PASTOR
Member of Congress

TRENT FRANKS
Member of Congress

PAUL GOSAR, D.D.S
Member of Congress

BEN QUAYLE
Member of Congress

DAVID SCHWEIKERT
Member of Congress

Cc: Hon. Ken Salazar, Secretary of the Interior
Cc: Hon. Steven Chu, Secretary of Energy
Cc: Hon. Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 14 2012

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Flake
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Flake:

Thank you for your letter of February 24, 2012, to President Obama, co-signed by five of your colleagues, concerning the U.S. Environmental Protection Agency's upcoming action on the Regional Haze Federal Implementation Plan (FIP) for the Navajo Generating Station (NGS). The President has asked that I respond on his behalf.

We understand your concerns and appreciate your interest in developing a viable solution. We have met with tribal stakeholders to assess their needs and issues with regard to the FIP. In addition, the EPA met with CAP to discuss the FIP and recently we met with representatives of the Maricopa-Stanfield Irrigation and Drainage District. We look forward to continuing the discussions with all interested parties.

We realize the significance of the NGS facility to the Navajo, Hopi, Gila River, and other tribes, as well as many others who depend on the power from NGS for a variety of purposes. In a recent letter to Interior Secretary Salazar and Energy Secretary Chu, EPA Administrator Jackson affirmed her commitment to collaborate with those agencies "on creative solutions to protect the environment, human health and natural resources, while honoring tribal communities and advancing our nation's renewable energy future." A copy of her letter is enclosed. The EPA staff has been meeting periodically with representatives from the Departments of Interior and Energy to discuss the National Renewable Energy Laboratory report and to better understand the many issues associated with the NGS plant.

I assure you we will consider the information in your letter, as well as what we learn in our continued stakeholder meetings, in developing a FIP that fully meets the requirements of the Regional Haze Rule. We expect to propose the FIP this summer; it will be open for public comment for at least 90 days and the EPA will hold several public hearings during this time. We welcome any additional information you may have for our consideration.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

Gina McCarthy
Assistant Administrator

Enclosure

cc: Jared Blumenfeld
Regional Administrator, EPA Region IX

Congress of the United States
Washington, DC 20515

June 28, 2012

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Administrator Jackson,

We write to raise concern regarding the Environmental Protection Agency's management of the regional haze state implementation plan (SIP) for the State of Arizona.

As you are aware, under the Clean Air Act (CAA), states are responsible for developing and submitting SIPs addressing regional haze and other "visibility protection" requirements. Under the CAA regional haze program, the states are the primary regulatory authorities and the State of Arizona submitted a regional haze SIP in February of 2011 that has yet to be either approved or disapproved by the agency. Unfortunately, we understand that several nongovernmental organizations (NGOs) have filed suit against EPA and are seeking to compel the agency to issue a federal implementation plan (FIP) addressing regional haze. While the State of Arizona has intervened as a party in the suit, we are concerned that EPA has sought to settle with the plaintiffs by agreeing to deadlines for the Arizona Department of Environmental Quality (ADEQ) as well as agreeing to issue a FIP - and has done so without consulting with the State.

Rather than continuing to move forward on a path that would end in federal intervention in critical air quality planning decisions best left to the states, we urge EPA to act on Arizona's SIP proposal rather than issue a FIP. Though it was submitted after the statutory deadline, it is our understanding that EPA has an obligation under the CAA to make a determination as to whether Arizona's regional haze SIP submittal meets the CAA's minimum standards and cannot ignore it and simply promulgate a regional haze FIP for the State. With an 18-month statutory timeframe for an EPA decision on this, the 15 months that EPA has had the State's proposed SIP should represent sufficient time for the agency to act. Should any deficiencies be identified and spelled out in the SIP process, EPA should allow time for the State to provide additional information, correct any deficiencies, and demonstrate why a FIP is not appropriate. It would appear that EPA taking such a posture in negotiations resulting from litigation would be consistent with the Congress' intention in the CAA.

At a minimum, EPA should seek to consult with ADEQ regarding the proposed timeframes in the consent decree for EPA action on the State's regional haze implementation plan or the displacement of this plan by EPA's promulgation of a FIP. Given the central importance of the states' policy-making and implementation role, it is crucial that state officials be involved in the establishment of deadlines applicable to EPA action on their states' regional haze implementation plans.

EPA's delay in the SIP approval process invited a lawsuit and the subsequent negotiations with NGOs without input from the State appears on its face to be in contravention of the CAA's goal of states maintaining primacy in this regulatory context and could yield a regulatory outcome that is less than opportune for Arizona residents. We are aware and greatly encouraged that EPA has worked constructively in the past year with North Dakota, Montana, and Nevada in approving regional haze SIPs. We ask that EPA provide the State of Arizona with a meaningful opportunity to provide input on the relevant issues related to the regional haze state implementation plan and consider information provided by the State that is relevant to the process.

Sincerely,

cc: Lisa Jackson, Administrator, U.S. EPA
Gina McCarthy, Assistant Administrator, U.S. EPA Office of Air and Radiation
Jared Blumenfeld, Regional Director, U.S. EPA Region 9

Congress of the United States

WASHINGTON, DC 20510

January 18, 2013

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Jackson:

We are writing in support of the Arizona Department of Environmental Quality's (ADEQ) request for an extension of the public comment period for responding to EPA's partial disapproval of Arizona's Regional Haze State Implementation Plan (SIP).[1]

It is our understanding that ADEQ is seeking to work collaboratively to address issues and EPA-identified deficiencies before the agency takes further action. However, moving forward with substantive revisions to the Arizona SIP will likely trigger the need for ADEQ to provide reasonable notice and a public hearing to interested Arizonans and related stakeholders. The current 42-day public comment period provided by EPA appears to deprive both agencies of this opportunity and instead will force ADEQ to divert its limited resources away from analyzing technical issues raised by EPA and toward drafting comments for the administrative record.

An extension of the comment period would appear consistent with EPA's stated preference "that all emission control requirements needed to protect visibility be implemented through the Arizona State Implementation Plan."[2] We thank you for your consideration and ask that this matter be handled in strict accordance with existing agency rules, regulations, consent decrees, and ethical guidelines.

Sincerely,

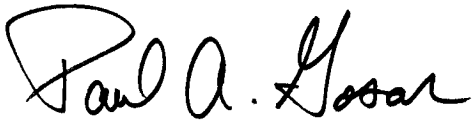
Jeff Flake
United States Senator

John McCain
United States Senator

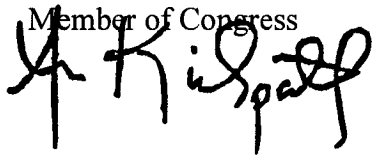
[1] *See* 7 Fed. Reg. 75704 to 75737 (Dec. 21, 2012).
[2] 77 Fed. Reg. 75706 (Dec. 21, 2012).

Trent Franks
Member of Congress

Ed Pastor
Member of Congress



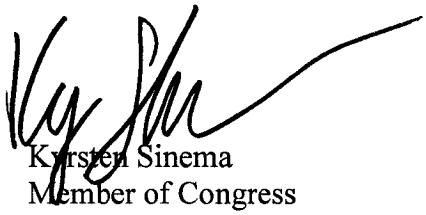
Paul Gosar
Member of Congress



Ann Kirkpatrick
Member of Congress

Ron Barber
Member of Congress

David Schweikert
Member of Congress



Kyrsten Sinema
Member of Congress

Matt Salmon
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 14 2013

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Jeff Flake
United States Senate
B-85 Russell Senate Office Building
Washington, DC 20510

Dear Senator Flake:

Thank you for your letter of January 18, 2013, concerning an extension of the public comment period on our action proposing to approve in part and disapprove in part Arizona's Regional Haze State Implementation Plan (SIP). I share your concern regarding the limited time available for the Arizona Department of Environmental Quality to make substantive revisions to the Regional Haze SIP. In response to your request and others, my office has extended the deadline for public comments by 30 days to March 6, 2013.

We are committed to working with the State to resolve as many issues as possible before we complete our final rule on the Arizona Regional Haze SIP. The final rule is due on July 15, 2013, as legally required by a consent decree.

I appreciate your interest in Arizona's Regional Haze SIP, and look forward to your continuing support for our collaboration with Arizona in resolving the issues that EPA has identified in the SIP.

We trust this information will be helpful in responding to your constituent's concerns. If we can be of further assistance, please call my Congressional Liaison, Brent Maier, at 415-947-4156.

Sincerely,

Jared Blumenfeld

United States Senate

WASHINGTON, DC 20510

March 7, 2013

President Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Obama:

Last month the Environmental Protection Agency (EPA) published a proposed rule that would require the Navajo Generating Station (NGS) located in northern Arizona to install the most expensive emissions-control technology aimed at improving visibility. Both the capital costs of that technology, up to $1.1 billion, and the visibility benefits are in dispute—the National Renewable Energy Laboratory claims the level of visibility improvement is uncertain,[1] while EPA asserts that those benefits would be perceptible. All sides agree, however, that installing this new technology would raise costs on the Bureau of Reclamation, a 24.3% owner of NGS.[2] We understand that those increased costs would result in higher water rates for Arizonans, with potentially devastating consequences for Native American communities, farmers, and residential water customers who are least able to afford it.

The impact of the rate increase would be profound. By way of example, the United States entered a water-settlement agreement with the Gila River Indian Community in 2004, entitling the Community to more than 300,000 acre-feet of water from the Central Arizona Project (CAP). The United States also committed hundreds of millions of dollars to construct and repair irrigation infrastructure on the reservation that will enable the Community to use its CAP allocation. It is entirely possible that EPA's proposal could render that investment useless by making the water too expensive for the Gila River Indian Community to purchase. Those higher rates could have a similarly negative effect on other tribes with CAP allocations, not only rendering the water more expensive but accelerating the depletion of tribal subsidies that are available to offset some of those costs.

Likewise, non-Indian communities stand to lose. For farmers, the increased costs threaten to force them back to using more groundwater—by some accounts doubling groundwater

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[1] National Renewable Energy Laboratory, *Navajo Generating Station and Air Visibility Regulations: Alternatives and Impacts* (hereinafter "NREL Study") at iv and 113 ("The body of research to date is inconclusive as to whether removing approximately two-thirds of the current NOx emissions from Navajo GS would lead to any perceptible improvement in visibility at the Grand Canyon and other areas of concern.").

[2] EPA Proposed Rule at 55 (Jan. 18, 2013) ("However, because of CAP's nearly complete reliance on NGS for power, we estimate that CAP water rates would increase by $8.40 per AF, representing a 6 percent increase in rates to M&I users and a 14 percent increase to tribes and agricultural water users."); *see also* NREL Study at iii. ("The cost burden of either SCR option or shutdown would probably fall more heavily on the Bureau of Reclamation....").

pumping in irrigation districts that currently receive large allocations of CAP water. Doing so would undermine over three-decades of bipartisan sustainable water policy developed by the likes of Bruce Babbitt and Jon Kyl, among many others. What's more, the increase in residential water rates would negatively affect families that are struggling to get back on their feet and cannot afford rate increases for visibility "improvements," which your own agencies do not agree upon.

Thus far, EPA, the Department of the Interior, and the Department of Energy have tried to reassure our constituents by providing a vague commitment to seek appropriations for the federal portion of the proposed pollution controls.[3] Such a response is misleading. It suggests that the solution is to simply override deficit control measures to pay for EPA-imposed costs. We believe it would be irresponsible for EPA to run the risk of unilaterally undermining federal obligations to Native American communities, eroding sustainable water policy, and imposing significant costs on struggling Arizonans, all while adding to our crippling national debt. Given the divergent views of the Administration's own agencies, we believe EPA should refrain from imposing the most expensive technology at this time. In light of your recent nominations, we hope that those individuals that are confirmed to head up the relevant departments will make efforts to understand these issues and chart a path forward that does not unnecessarily increase costs on those that are least able to afford it.

Sincerely,

JEFF FLAKE
United States Senator

JOHN MCCAIN
United States Senator

cc: The Honorable Ken Salazar, Secretary of the Interior
The Honorable Steven Chu, Secretary of Energy
The Honorable Bob Perciasepe, Acting Administrator, Environmental Protection Agency

[3] Joint Federal Agency Statement Regarding Navajo Generating Station at 3 (Jan. 4, 2013); *see also* EPA Proposed Rule at page 55.

FAX

OFFICE OF U.S. SENATOR JEFF FLAKE
The United States Senate
Russell Senate Office Building, Suite B85
Washington, D.C. 20510

Phone: (202) 224-4521
Fax: (202) 228-0506

To: Arvin Garneson	**From:** Sen. Jeff Flake
Fax: 202 501 1519	**Pages:** 3 including Cover
Phone:	**Date:** 3/7/13
RE: NGS-Letter to POTUS RE: NGS	

Comments:

MAY 2 0 2013

The Honorable Jeff Flake
United States Senate
Washington, D.C. 20510

Dear Senator Flake:

Thank you for your letter to President Barack Obama dated March 7, 2013, co-signed by Senator McCain, concerning the Joint Federal Agency Statement Regarding Navajo Generating Station and the U.S. Environmental Protection Agency's (EPA) proposed rulemaking to implement the Best Available Retrofit Technology (BART) requirement of the Clean Air Act for the Navajo Generating Station (NGS). We have been asked to respond on the President's behalf.

Congress established the national goal of restoring visibility in National Parks and Wilderness Areas to natural conditions and directed EPA to take action to reduce visibility impairment in these areas. The NGS is located on the Navajo Nation in northern Arizona near eight National Parks and three Wilderness Areas, and is less than 20 miles from the eastern boundaries of the Grand Canyon National Park. The scenic vistas at the Grand Canyon, and the other National Parks and Wilderness Areas near NGS, draw millions of visitors each year to Arizona and other states in the Southwest. These visitors contribute approximately $1 billion annually to the region's economy.

We share your interest in ensuring a path forward for NGS that continues to provide economic support to the Navajo Nation and Hopi Tribe and avoids increasing the costs of water to Native American communities, farmers, and residential water customers in Arizona as much as possible. For the past 3 years, EPA and the Department of the Interior (DOI) have communicated extensively with many tribes, and with members of the agricultural community, the owners of NGS, Central Arizona Water Conservation District, and other stakeholders. We understand the significance of NGS to numerous entities and tribes located in Arizona, including the Navajo Nation, Hopi Tribe, and Gila River Indian Community. We also recognize our shared Federal trust responsibility for tribes and their members.

The DOI has numerous interests in NGS and its emissions, the most significant of which include Bureau of Reclamation's 24.3 percent interest in NGS power generation, which supports the delivery of Central Arizona Project water and the implementation of several Indian water settlements, the National Park Service's management of eight National Parks affected by NGS emissions, the Bureau of Indian Affairs approval of leases and rights-of-way on tribal trust lands in furtherance of the DOI's trust responsibilities to Indian tribes, and the Office of Surface Mining's oversight of permitting at the Kayenta Coal Mine. The DOI's multiple interests in NGS and its many stakeholders, in combination with EPA's BART rulemaking, provided the

primary impetus to the issuance of the DOI-EPA-Department of Energy's Joint Federal Agency Statement and creation of a joint Federal agency working group regarding NGS.

The EPA's goal in issuing a proposed BART determination for NGS was to develop a flexible approach that could support continued plant operation well into the future. The EPA's unique proposal describes three alternatives to the proposed BART determination and encourages interested parties to suggest additional options. The alternatives are designed to provide flexibility to the owners in light of the other processes that are currently underway, such as lease renewals. The proposal provides this flexibility by crediting NGS for the early and voluntary reduction of nitrogen oxide emissions beginning in 2009, and extending the compliance time for achieving BART emissions reductions to 10 years or longer. As a result, we believe that the proposal recognizes the many factors at play with NGS and the uncertainties that currently exist, and the additional time provided makes it easier for the owners to plan for the future of the plant. In response to requests from stakeholders, and in recognition of the complex issues surrounding NGS, EPA extended the original 90 day comment period on this proposal for another 90 days. The EPA looks forward to receiving comments on alternatives and other issues related to the proposal and will consider all information in its final decision.

The EPA's analysis in the proposed BART rule demonstrates that the installation and operation of the proposed BART controls at NGS would result in the largest visibility improvements in the Nation from the control of a single stationary source. This analysis considers all the information and analyses submitted in response to its Advanced Notice of Proposed Rulemaking, including the National Renewable Energy Laboratory report cited in your letter and new information from many sources. The analysis also projects significantly lower capital costs for the controls that would be required under the proposed rule than those reflected in your letter.

Congress charged the EPA and the Federal land managers with protecting and improving visibility in our National Parks and Wilderness Areas. We share and appreciate your concern in ensuring a path forward for protecting visibility in these treasured natural areas that honors our obligations to tribes and supports the short and long term sustainability of the regional economy.

If you have further questions, please contact either of us or your staff may call Deputy Director Stephenne Harding in DOI's Office of Congressional and Legislative Affairs at (202) 208-7693, or Mr. Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

Sally Jewell
Secretary
Department of the Interior

Bob Perciasepe
Acting Administrator
Environmental Protection Agency

United States Senate

WASHINGTON, DC 20510

November 5, 2013

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy:

We are writing regarding the Environmental Protection Agency (EPA) Brownfields and Land Revitalization Program. As you know, the Brownfields Program provides a tool for local communities seeking to remediate and redevelop hazardous or underutilized properties. In 2013, the EPA Region 9 Office appears not to have issued a single Brownfields "Assessment Grant" in the State of Arizona for the first time in at least the last 5 years.

We respectfully request that you provide the reasoning for why EPA declined to award an Assessment Grant to any applicant in the State of Arizona for 2013. Let us emphasize that we are not asking for you to take any action on this matter that would contravene existing rules, regulations and guidelines, nor are we requesting preferential treatment for any single interest or select group of interests under this program. We understand that EPA awards grants under this program on a competitive basis using certain threshold criteria. We are not asking you to revisit past decisions or to construe this letter as an appeal of any application for the 2013 award year. Rather, we simply seek assurances that fairness is being observed in the Brownfields Program.

Sincerely,

John McCain
United States Senator

Jeff Flake
United States Senator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 19 2014

The Honorable Jeff L. Flake
U.S. House of Representatives
Washington, D.C. 20515

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Dear Congressman Flake:

Thank you for your letter of November 5, 2013, concerning applicants for Brownfield grants in Arizona. I appreciate your interest in the Brownfields Program and your support of communities in the state of Arizona.

As you know, the Small Business Liability Relief and Brownfields Revitalization Act assists states and communities throughout the country in their efforts to revitalize and reclaim brownfields sites. The Brownfields Program is an excellent example of the success that is possible when people of all points of view work together to improve the environment and their communities. To date, the U.S. Environmental Protection Agency has leveraged $20.1 billion and leveraged over 90,000 jobs.

From 2009 to 2013, the EPA Brownfields Program received 34 proposals from communities in the state of Arizona. Arizona has one of the highest rates of success with 13 of the 34 proposals submitted being selected for award for a 38% success rate. To date, there are 14 active brownfields grants serving communities in Arizona. Unfortunately, despite their historically high success rate, the four Arizona communities that submitted proposals in the FY 2013 grant competition cycle did not rank high enough to be selected for award. As in past years, the Brownfields Program received requests for more than four times the amount of grants than there was funding available. The FY 2013 application process was highly competitive with the EPA receiving proposals for 885 grants. From these proposals, the EPA was only able to fund 240 grants. Upon request, the EPA is happy to provide unsuccessful applicants with a debriefing to discuss the strengths of the applicant's proposal and areas where it could be improved. In addition, we encourage unsuccessful applicants to contact their regional Technical Assistance to Brownfields Communities (TAB) grantee who can provide them with additional technical assistance in applying for the EPA Brownfields grants in the future. The TAB grantee providing support to communities in Arizona is the Center for Creative Land Recycling.

Complementing the competitive application process, the Arizona Department of Environmental Quality receives the EPA's funding to administer its State and Tribal Response Program. This Program provides resources to perform Brownfield assessment and cleanup work in communities throughout the state. In addition, local governments, tribes, non-profit organizations and others can also apply to the EPA non-competitively for assessment work directly through the EPA's Targeted Brownfield Assessment program. Interested communities may contact their regional brownfield coordinator for more information.

The EPA Brownfields Program's FY 2014 grant competition is now closed. However, we encourage communities in Arizona to continue to apply in the FY15 brownfields grant competition. If communities would like to get a head start on their proposals, they may review the selection criteria for grant

proposals in the *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (November 2013)* posted on our brownfields website at ***www.epa.gov/brownfields***.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at Snyder.Raquel@epa.gov, or at (202)-564-9586.

Sincerely,

Mathy Stanislaus

Mathy Stanislaus
Assistant Administrator

Congress of the United States
Washington, DC 20515

November 13, 2013

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy,

As members of the Senate and Congressional Western Caucuses, we are contacting you regarding our opposition to the Environmental Protection Agency's (EPA) efforts to significantly expand federal regulatory authority under the Clean Water Act.

As you know, the EPA has sent a draft rule to the Office of Management and Budget (OMB) regarding the definition of "the waters of the United States" under the Clean Water Act. Based on EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters," and the agency's commitment to rely on this report during the rulemaking process, we are concerned that EPA's final rule may in effect expand federal jurisdiction over all wet areas of a state. This is despite Congress's limiting of the EPA's and the Army Corps of Engineers' authority under the CWA, as the Supreme Court has consistently recognized.

EPA has indicted the following regarding the so-called Connectivity Report:

> *"This report, when finalized, will provide a scientific basis needed to clarify Clean Water Act jurisdiction, including a description of the factors that influence connectivity and the mechanisms by which connected waters affect downstream waters. Any final regulatory action related to the jurisdiction of the Clean Water Act in a rulemaking will be based on the final version of this scientific assessment, which will reflect EPA's consideration of all comments received from the public and the independent peer review."*

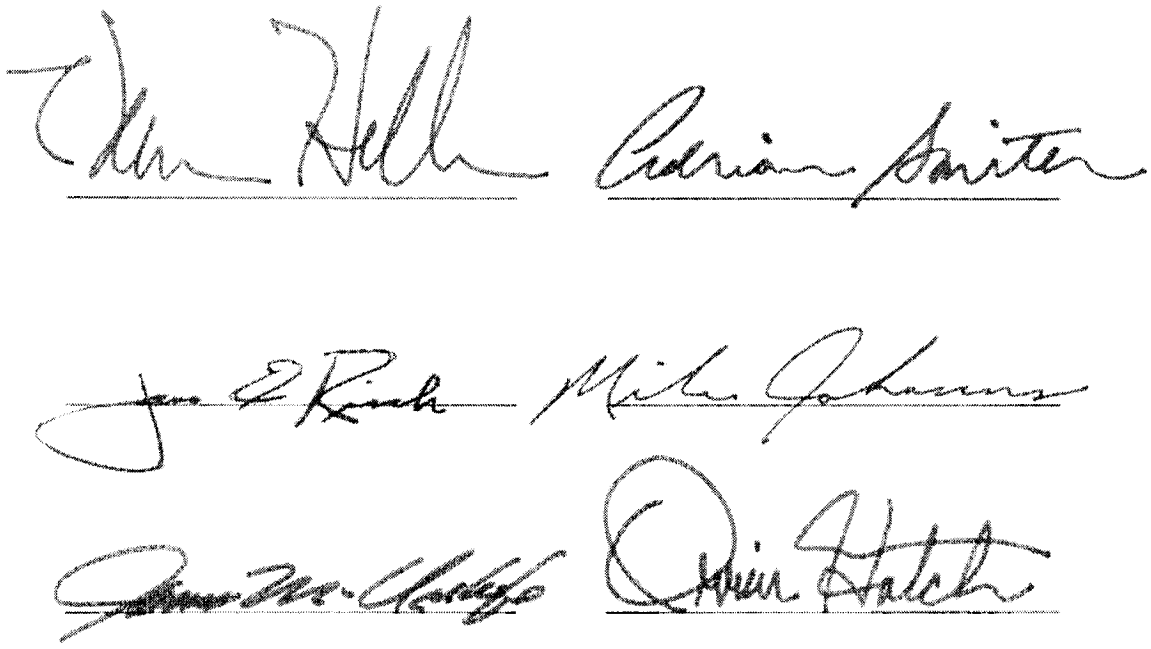
If EPA believes that the law should be changed based on new scientific research, we would welcome you sending any proposals to Congress for our consideration. Issuing reports and using them to potentially change a law duly passed by Congress would invite legitimate legal challenges and further erode the public's confidence in our Constitutional system of checks and balances.

As you may be aware, there has been strong opposition to past efforts to have the federal government control all wet areas of the states. Most recently during consideration of the Water Resources Development Act (WRDA), a bipartisan group of Senators voted 52 to 44 to reject the EPA's Clean Water Act Jurisdiction Guidance which would have also resulted in effectively unlimited jurisdiction over intrastate water bodies. Efforts to pass legislation to have the federal government control all non-navigable waters have also failed in past Congresses.

Strong opposition to EPA's approach is based on the devastating economic impacts that a federal takeover of state waters would have. Additional regulatory costs associated with changes in jurisdiction and increases in permits will erect bureaucratic barriers to economic growth, negatively impacting farms, small businesses, commercial development, road construction and energy production, to name a few. In addition, expanding federal control over intrastate waters will substantially interfere with the ability of individual landowners to use their property.

We urge you to change course and to commit to operating under the limits established by Congress, even if those limits are impermissibly overlooked in the so-called Connectivity Report. We ask that you work with Congress to address these issues keeping in mind the need to provide clean water for our environment and communities, while also acknowledging the important role states play as a partner in achieving these goals. We also ask that you consider the economic impacts of your policies knowing that your actions will have serious impacts on struggling families, seniors, low income households and small business owners.

Sincerely,



UNITED STATES SENATOR
JOHN BARRASSO

307 Dirksen Senate Office Building, Washington, D.C. 20510

FACSIMILE TRANSMISSION

To: EPA Congressional Liaison

Fax number: 202-501-1519

From: Brian Clifford, Sen. Barrasso's Office 202-224-0800

____ Pages following this cover sheet.

NOTES: _____

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If you encounter problems with this fax, please contact the office of Senator John Barrasso at (202) 224-6441

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

The Honorable Jeff Flake
United States Senate
Washington, D.C. 20510

MAY - 9 2014

OFFICE OF WATER

Dear Senator Flake:

Thank you for your November 13, 2013, letter to the U.S. Environmental Protection Agency regarding the EPA's joint rulemaking efforts with the U.S. Army Corps of Engineers to revise the agencies' regulatory definition of the term "Waters of the United States" under the Clean Water Act.

On March 25, the agencies released a proposed rule in order to provide additional clarity regarding the geographic scope of Clean Water Act jurisdiction and to improve national consistency and predictability. The agencies took this step in response to requests from a broad range of interests including industry, agriculture, states, environmental groups, and other stakeholders that we clarify the geographic scope of Clean Water Act jurisdiction through formal notice and comment rulemaking. The agencies' proposed rule was published in the Federal Register on April 21, which began a 90-day public comment period. During this period, the agencies are launching a robust outreach effort, holding discussions around the country and gathering input needed to shape a final rule.

Your letter expresses concerns that the agency's rulemaking efforts will yield a proposed rule that is inconsistent with the Clean Water Act. In particular, your letter expresses concerns that the agencies will use the EPA's draft scientific report, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," in a way that will disregard the limitations on the agencies' authority outlined in the Clean Water Act. I can assure you that the agencies respect the limits on Clean Water Act jurisdiction established in the statute as well as in Supreme Court decisions on this issue. The agencies' proposed rule does not protect any new types of waters that have not historically been covered under the Clean Water Act and is consistent with the Supreme Court's more narrow reading of Clean Water Act jurisdiction. At the same time, the agencies' efforts are being informed by the latest peer-reviewed science, including the EPA's draft scientific report, which presents a review and synthesis of more than 1,000 pieces of scientific literature.

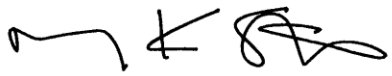
Your letter also expresses concerns regarding the potential economic impacts of the agencies' rulemaking efforts. The agencies' proposed rule will help clarify protection under the Clean Water Act for streams and wetlands that form the foundation of the nation's water resources, and will benefit businesses by increasing efficiency in determining coverage of the Clean Water Act. The agencies conducted an economic analysis of the impacts of the proposed rule, which found that the benefits of the proposed rule would exceed the costs. The agencies made this analysis publicly available at the time they released the proposed rule.[18]

[18] This analysis is available at http://www2.epa.gov/sites/production/files/2014-03/documents/wus_proposed_rule_economic_analysis.pdf.

The agencies' proposed rule is now open for public comment, and we welcome comments from you and your constituents during the 90-day public comment period. Comments can be submitted through www.regulations.gov in Docket No. EPA-HQ-OW-2011-0880.

Thank you again for your letter. Please feel free to contact me if you have any questions on this important issue, or your staff may call Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836.

Sincerely,



Nancy K. Stoner
Acting Assistant Administrator

Kris Kiefer

General Counsel

Office of Senator Jeff Flake

202-224-4521 (v) 202-228-0506(f)

Kris_Kiefer@flake.senate.gov

TO: Laura Vaught

OF: Environmental Protection Agency

RE: Letter from Members of the Arizona Delegation regarding BART alternative for Navajo Generating Station

DATE: 12/16/2013

Message:

Pages Including Cover:

Congress of the United States

WASHINGTON, DC 20510

December 16, 2013

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Room 3000
Washington, D.C.

RE: EPA Federal Implementation Plan for Navajo Generating Station (NGS)
Docket Number: EPA-R09-OAR-2013-0009

Dear Administrator McCarthy:

We appreciate the opportunity to provide comment on this latest step in the agency's on-going regulatory process involving the Navajo Generating Station.

In its October 2013 supplemental filing, EPA recognized the unique purpose and history of NGS, as well as the myriad stakeholders that share an interest in the plant. It is that unique role, which was called into question by the far-reaching impacts of EPA's initial Best Available Retrofit Technology (BART) proposal.

In response, a Technical Work Group (TWG) of stakeholders, including the Department of the Interior, crafted an alternative aimed at mitigating the damage EPA's original proposal would have inflicted. While there are diverse positions on the actions that have led us to this point as well as some of the elements contained within the TWG alternative, we support the overarching objectives of the TWG's better-than-BART proposal:[1] preserve the federal trust responsibility, honor legally binding water settlements, and mitigate economic harm to Indian and non-Indian communities, without adding to the federal deficit by imposing additional costs on taxpayers.

Given the importance of NGS, we hope EPA will carefully consider comments provided during the rule making process. We further urge EPA to ensure that potential future regulations do not render the TWG alternative meaningless.

[1] Consistent with EPA's supplemental filing on October 22, 2013, this letter is limited in scope to Appendix B of the TWG agreement, the better-than-BART alternative. It should not be construed as a comment on any other provisions in the TWG agreement, which are unrelated to EPA's BART determination.

Thank you for your attention to this important issue, and for including these comments in the record. As always, we ask that this matter be handled in strict accordance with agency rules, regulations, and ethical guidelines.

Sincerely,

JEFF FLAKE
United States Senator

JOHN MCCAIN
United States Senator

ANN KIRKPATRICK
Member of Congress

RON BARBER
Member of Congress

MATT SALMON
Member of Congress

DAVID SCHWEIKERT
Member of Congress

ED PASTOR
Member of Congress

TRENT FRANKS
Member of Congress

KYRSTEN SINEMA
Member of Congress

PAUL GOSAR
Member of Congress

cc: Anita Lee (AIR-2), US EPA, Region 9
EPA Docket No. EPA-R09-OAR-2013-0009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 5 2014

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Flake
United States Senate
Washington, D.C. 20510

Dear Senator Flake:

Thank you for your letter of December 16, 2013, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the proposed federal implementation plan for Navajo Generating Station (NGS). The Administrator has asked me to reply on her behalf.

We appreciate your support of our October 22, 2013, supplemental proposal that determined that the Technical Working Group's alternative emission reduction plan is "better than BART." We have added your letter to the administrative record for our proposed rulemaking on NGS.

The Clean Air Act requires major electric generating power plants like NGS to reduce their impact on affected national parks by reducing their emissions with Best Available Retrofit Technology (BART). As you are aware, our work to implement BART for this power plant has generated widespread interest throughout Arizona. We appreciate the unique circumstances surrounding NGS and its importance for a number of Tribes, farmers, and municipal water users, and are listening carefully to these and many other stakeholders as we develop this rule. The EPA has received and is currently reviewing over 70,000 comments, including comments presented during our five public hearings in Arizona on November 12-15, 2013, and written comments received by the close of the comment period on January 6, 2014.

In addition, as you know, we are working closely with the Department of the Interior and the Department of Energy through the Joint Federal Agency Working Group on Navajo Generating Station. This working group is helping the participating agencies align our federal efforts related to NGS, complete the Phase 2 report on clean energy options at NGS, and work with stakeholders to help develop a long-term roadmap for NGS.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or (202) 564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 95105-3901

JUL 10 2014

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Jeff Flake
United States Senate
SR-368 Russell Senate Office Building
Washington, DC 20510-0305

Dear Senator Flake:

Thank you for your letter dated May 29, 2014, regarding the U.S. Environmental Protection Agency's (EPA) regulatory activities at the Asarco Hayden Smelter. The Administrator has asked me to respond.

As you point out in your letter, EPA Region 9 is engaged in multiple efforts with Asarco at the Hayden Smelter. EPA Region 9's air, compliance, legal and Superfund teams are working closely together, and with our Arizona Department of Environmental Quality colleagues, as we address various aspects of the Hayden smelter. EPA Region 9 has also engaged directly with the company on several fronts. For example, Asarco submitted comments on EPA's proposed Regional Haze Federal Implementation Plan (FIP), expressing concern that the FIP could interfere with Asarco's plans to comply with the one-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). We met with representatives of Asarco on May 15, 2014 to discuss this issue. In response to the concerns raised by Asarco, we revised the FIP to ensure that the requirements applicable to Asarco would not interfere with the measures Asarco plans to implement to comply with the SO_2 NAAQS. We also continue to meet regularly with Asarco regarding the enforcement matters referenced in your letter.

We will continue to work with Asarco on the various regulatory and enforcement efforts and in developing appropriate solutions. If you have further questions, please contact Congressional liaison Brent Maier at 415-947-4256.

Sincerely,

for Alexis Strauss
Jared Blumenfeld
Regional Administrator

Congress of the United States
Washington, DC 20515

May 29, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy,

We write regarding the regulatory compliance efforts of Asarco, a mining company in our state, and one of its facilities in Hayden, Arizona.

It is our understanding that the Asarco Smelter currently faces four related, but independent, environmental regulatory challenges regarding its air emission controls. Two challenges involve independent Environmental Protection Agency (EPA) rulemakings and two involve existing EPA enforcement actions against Asarco. From Asarco officials, we understand that each challenge may impose separate and often conflicting compliance requirements, rendering it virtually impossible for Asarco to efficiently achieve compliance and enhance their operation.

As you know, the mining sector is vital to Arizona's economy. In 2012 alone, the mining industry in Arizona added $4.8 billion to the state's economy and employed 52,100 Arizonans. That same year, the Asarco Smelter provided over 1,400 jobs, $140.8 million in wages, and $28.6 million in property and sales tax revenue. The failure to resolve these issues would be a lost opportunity for economic growth in Arizona.

For this reason, we ask that you address this matter and, to the extent possible, have EPA partner with Asarco at the headquarters and regional level toward developing a consolidated solution to these regulatory issues. We would appreciate your attention to this request, in strict accordance with all existing rules, regulations, and ethical guidelines.

Sincerely,

JEFF FLAKE
United States Senator

JOHN MCCAIN
United States Senator

ANN KIRKPATRICK
Member of Congress

PAUL GOSAR
Member of Congress

United States Senate

WASHINGTON, DC 20510

July 8, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

The Honorable Shaun Donovan
Director
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Dear Administrator McCarthy, Secretary Vilsack, and Director Donovan,

We write to express deep concern with President Obama's attempt to bypass Congress and commandeer the state regulatory process to impose unduly burdensome carbon-emissions regulations at existing power plants; the so-called Clean Power Plan (CPP). Our fear is that the CPP would create significant technological and economic challenges that disproportionately affect Arizonans.

As proposed, the CPP would force Arizona, unlike almost any other state, to achieve a 52% reduction in its carbon-emissions by 2030, with nearly 90% of that reduction (equivalent to re-dispatching all of Arizona's coal-fired baseload generation) coming within five years. The plan effectively ignores Arizona's zero-emission nuclear asset, Palo Verde Generating Station, and gives little credit for the widespread deployment of renewable technology throughout the state. Instead, the plan charges head long toward dictating Arizona's resource portfolio and regulating beyond the fence line.

Shrouded by the veil of choice, EPA contends that Arizona can use a combination of options (aka "building blocks") to achieve these targets. In reality, the CPP treats Arizona so harshly that it would be compelled to maximize the use of all its building block "options" just to comply with the rule. This is hardly a choice. Rather, as explained by Harvard law professor Laurence

Tribe, the proposed plan would effectively dictate the energy mix in each state, allowing a federal commandeering of state governments and violating principles of federalism that are basic to our constitutional order.

As an example, EPA expects Arizona to redispatch coal-fired generation almost entirely with increased natural gas generation. Yet, EPA ignores that more than half of the state's existing natural gas capacity is merchant capacity, not owned by Arizona utilities. Moreover, Arizona's natural gas generating units are often used to manage the diverse energy portfolio, including renewable supplies, meaning that increased baseload use of those resources limits their ability to assist with intermittent generation. Mistakenly, EPA assumes that Arizona can quickly transition from coal generation to natural gas generation by making greater use of existing natural gas facilities. The EPA is not taking into consideration the peak customer energy demands the state requires in the summer months or the current natural gas infrastructure in place.

Converting coal resources to natural gas will also leave millions of dollars in stranded assets in which plants are forced to close before their useful life. As you are well aware, utilities throughout the state have recently retrofitted a number of these units to comply with other EPA regulations, such as the regional haze rule. It is unreasonable for EPA to compel utilities and their ratepayers to comply with one rule, only to render those investments wasted just a couple of years later under a different rule.

Utilities and pipeline providers would, therefore, be forced to spend billions of dollars on new energy infrastructure which could take years to plan, implement, and negotiate. The state's year-round energy needs simply cannot be replaced by natural gas-fired plants in time for the CPP's 2020 interim deadline.

As the Supreme Court recently found, these types of economic issues are not "irrelevant" to the rulemaking process. They must be considered, rather than marginalized. And, in this case, it is not simply the stranded cost of investing in new emissions technology or the increased rates; it is also the impact on other areas of the state's economy, such as water deliveries that depend on energy. An increase in water-delivery costs, particularly during the ongoing drought, will only serve to further harm consumers.

This situation is no doubt exacerbated by the possibility that taxpayers could also pay more for this rule, as it threatens to cause default on over $250 million in taxpayer-backed Rural Utilities Service (RUS) loans in Arizona. But, Arizona's coal plants, including those with expensive air pollution controls, will not operate long enough under the CPP to pay these loans back. Shuttering Arizona's coal plants before their useful life is completed will challenge rural electric cooperative's ability to pay back those loans.

In an effort to address many of these concerns, on December 1, 2014, the Arizona Department of Environmental Quality (ADEQ) in concert with the Arizona Utility Group, proposed a compliance plan that would work for Arizona. They suggested narrowly modifying EPA's CPP to allow newer, more efficient coal-fired power plants to continue to fully operate after 2030. This more gradual plan would ensure that investments in expensive emission control technologies will not be stranded and that the CPP's impact on Arizonans will be mitigated.

With the proposed final rule currently pending before OMB, we would appreciate your consideration of the Arizona Utility Group proposal and our concerns, as well as a written response to the following questions no later than July 27, 2015:

1. What cost-benefit analysis was conducted in connection with the Administration's decision to go forward with this rule? Specifically, what is the expected aggregate economic impact of this rule on Arizona businesses and consumers?
2. The USDA has indicated that $254.8 million is held through RUS loans in Arizona. What is the value of these loans that USDA holds nationally?
3. Is the OMB taking the significant loss of taxpayer investment in these loans into consideration of the EPA's final rule?
4. If the rule is approved and Arizona's rural energy providers are forced out of business, what happens to the existing loans?

Thank you for your attention to this matter, I look forward to your response.

Sincerely,

John McCain
United States Senator

Jeff Flake
United States Senator

JEFF FLAKE
ARIZONA
SR-413 RUSSELL SENATE OFFICE BUILDING
(202) 224-4521
COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON AGING

United States Senate
WASHINGTON, DC 20510-0305

STATE OFFICES
2200 EAST CAMELBACK ROAD
SUITE 120
PHOENIX, AZ 85016
(602) 840-1891

6840 NORTH ORACLE ROAD
SUITE 150
TUCSON, AZ 85704
(520) 575-8633

November 19, 2015

Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

I am writing to request a 30-day extension of the public comment period for the proposed rule revisions entitled "Treatment of Data Influenced by Exceptional Events" (Docket No. EPA-HQ-OAR-2013-0572), commonly referred to as the Exceptional Events Rule, and the associated draft guidance document referred to as "Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations" (Docket No. EPA-HQ-OAR-2015-0229).

I am pleased that EPA has acknowledged the need to revisit the original rule promulgated in 2007 by addressing substantive concerns and administrative inefficiencies. EPA's emphasis on returning to the statutory requirements for designating an exceptional event is encouraging, as is the focus on "less burdensome measures" to reduce the amount of resources necessary to quantify that an exceptional event occurred.

Likewise, it is welcome news that EPA is hosting its public hearing in Phoenix, Arizona, where many stakeholders have been impacted by EPA's rigid application of the 2007 rule to Arizona's uniquely arid climate. I share the view of those stakeholders that EPA must instead find a reasonable approach that enables efficient and consistent administration of the Exceptional Events Rule. It is my hope that this effort will lead to that result.

In order to ensure the best product, I respectfully request that EPA extend its public comment period for 30-days. While I recognize that the agency intends to move expeditiously to complete the revision before states and tribes are required to submit recommendations for the 2015 ozone National Ambient Air Quality Standards, I believe a modest extension could help better inform the final revisions. As it stands, the current schedule requires interested parties to digest the 200-plus page proposal and develop comments during the busy holiday season. The prudent course is to extend the deadline.

Thank you for your consideration of this request. As always I ask that it be handled in strict accordance with all agency rules, regulations, and ethical guidelines.

Sincerely,

JEFF FLAKE
United States Senator

United States Senate

WASHINGTON, DC 20510

December 18, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania, NW
Washington, DC 20004

Dear Administrator McCarthy:

We write to request the Environmental Protection Agency ("EPA") promptly complete its reconsideration of the Federal Implementation Plan ("FIP") for Coronado Generation Station ("CGS") and consider a common-sense "Better-than-BART" proposal.

In March, EPA proposed revisions to the FIP for CGS that would "replace a plant-wide compliance method with a unit-specific compliance method for determining compliance with the best available retrofit technology (BART) emission limits for nitrogen oxides (NOx) from Units 1 and 2 at Coronado."[1] EPA subsequently indicated it would "take final action on reconsideration by September 2015...."[2] Yet, three months after that self-imposed "goal" and nearly seven months after the close of the public comment period, EPA appears to be no closer to completing the reconsideration.

EPA's failure to follow through on this effort leaves CGS, its employees, and the entire Apache County community in a state of perpetual uncertainty. Without correcting the FIP, the plant faces the likely possibility that it will close by December 2017. That will not only devastate the local economy and untold families, but it will strand the approximately $500 million investment in CGS that the Salt River Project ("SRP") made pursuant to a consent decree in 2014.

The uncertainty of this situation is further exacerbated by EPA's Clean Power Plan, which serves to unnecessarily complicate an already difficult situation. SRP has developed a "Better-then-BART" proposal for the plant that may, when combined with EPA's FIP reconsideration, put CGS on a workable path toward operational certainty. We seek a path forward that could give CGS and the community the best opportunity to weather EPA's regulatory onslaught, and we encourage you to work expeditiously to lift the cloud of uncertainty currently hanging over the plant's continued operation.

Thank you for your prompt consideration of this request. As always, we ask that this matter be handled in strict accordance with all agency rules, regulations, and ethical guidelines.

Sincerely,

JEFF FLAKE
United States Senator

JOHN MCCAIN
United States Senator

[1] 80 Fed. Reg. 17,010 (Mar. 31, 2015).
[2] Letter from Angeline Purdy, Counsel for EPA to Molly Dwyer, Clerk of the Court, 9th Cir. Court of Appeals (Apr. 3, 2015).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 2 1 2016

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Flake
United States Senate
Washington, D.C. 20510

Dear Senator Flake:

Thank you for your letter of December 18, 2015, to the U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the pending actions of the EPA with respect to the Coronado Generating Station (CGS) in St. Johns, Arizona. The Administrator asked that I respond on her behalf.

We appreciate the significance of this facility to the community and to the State of Arizona. As you noted in your letter, the EPA has granted the Salt River Project (SRP) a reconsideration of the CGS Regional Haze federal implementation plan (FIP). On March 31, 2015, we proposed to revise the compliance method and emission limits for nitrogen oxides (NOx) that apply to the CGS under the FIP. We received comments on that proposal from SRP representatives and others. We are now in the process of considering and responding to those comments. The EPA intends to complete the final action by March 2016, and has informed SRP of that timeline. At the same time, the EPA is working with SRP and the Arizona Department of Environmental Quality (ADEQ) on the modeling and technical information to support SRP's Better-than-BART proposal. That work is proceeding in parallel with the reconsideration efforts.

The EPA has been meeting regularly with SRP and ADEQ, and will continue to do so in order to move these actions forward.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or (202) 564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

Congress of the United States

Washington, DC 20510

September 27, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator McCarthy,

We write to express our continued and serious concerns about the 2015 Ozone Standard of 70 parts per billion (ppb) and its effect on the state of Arizona.

In addition to contributing to economic strain while providing negligible health benefits, the new ozone standard harms Arizona by forcing the state to regulate ozone emissions that are beyond its control. Arizona's ability to comply with the 70 ppb ozone standard is significantly impacted by the influx of contributing emissions from international and interstate transport, vehicles, and natural sources. As you know, these emissions fall well outside the jurisdiction and control of the state of Arizona and would unfairly penalize our communities and businesses.

For example, the Yuma Metropolitan Area will be designated by the Environmental Protection Agency (EPA) as a "nonattainment area" with regard to the 2015 Ozone Standard. Yet, according to the EPA's National Emission Inventory (NEI), industrial or commercial sources in Yuma are responsible for producing only 0.2 percent of volatile organic compounds (VOC) and a mere 5 percent of the nitrogen oxide (NOx) emissions in its metropolitan area. The NEI reflects that the vast majority of VOCs generated in Yuma are from natural sources, while vehicles regulated by the EPA are the significant contributing source for the NOx emissions generated there. In fact, by the EPA's own admission, the predominant sources of Yuma's ozone emissions are Mexico and California, not the commercial and industrial sources that will bear the financial and regulatory burdens of this "nonattainment area" designation. This appears to be contrary to the intentions of the standard.

Nine of the ten counties in Arizona that monitor for ozone are in serious jeopardy of exceeding the 2015 Ozone Standard, especially if dry meteorological conditions persist over the next three years. Even if these counties could qualify for various exceptions, it would not make a difference. The counties would still be in a perpetual nonattainment status until the contributing sources, including those which originate internationally, in another state, or naturally, are mitigated.

International and interstate air pollution transport is of paramount concern to Arizona. Under the agency's legislative authority, what if any practical mechanism is available to the Western United States to address these significant issues in a meaningful way? We urge you to avoid moving forward in a manner that is guaranteed to cause irreparable harm to Arizona's economy by

requiring even further emission offsets and more stringent permitting requirements for major sources while offering negligible benefit to public or environmental health.

Sincerely,

Jeff Flake
United States Senator

John McCain
United States Senator

Trent Franks
Member of Congress

David Schweikert
Member of Congress

Paul Gosar
Member of Congress

Martha McSally
Member of Congress

Matt Salmon
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 2 0 2016

OFFICE OF
AIR AND RADIATION

The Honorable Jeff L. Flake
United States Senate
Washington, D.C. 20510

Dear Senator Flake:

Thank you for your letter of September 27, 2016, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the Ozone National Ambient Air Quality Standards (NAAQS). The Administrator asked that I respond on her behalf.

As you know, the EPA sets NAAQS to protect public health and the environment from six common pollutants, including ground-level ozone. The Clean Air Act requires the EPA to review these standards every five years to ensure that they are sufficiently protective. On October 1, 2015, the EPA strengthened the NAAQS for ground-level ozone to 70 parts per billion, based on extensive scientific evidence about ozone's effects on public health and welfare. The final updated standards will improve public health protection, particularly for at-risk groups including children, older adults, people of all ages who have lung diseases such as asthma and people who are active outdoors, especially outdoor workers. The standards also will improve the health of trees, plants, crops and ecosystems.

The EPA recognizes that in some areas of Arizona, there may be some uncommon ozone pollution challenges. Congress established requirements for implementing the health-based NAAQS standards that recognize issues like background ozone and interstate transport to ensure that states are not responsible for emissions they cannot reasonably control. We will work with states – Arizona included – that may be significantly affected by air pollution from background ozone and from other states, to ensure that all relevant Clean Air Act flexibilities are appropriately used. The EPA will continue working closely with tribes and local air quality officials, nongovernmental organizations, interested commercial representatives, and other federal agencies to explore strategies and technologies to reduce pollution and improve public health protection.

The EPA officials are meeting with the Arizona Department of Environmental Quality (ADEQ) and local officials to discuss various options for those areas in the State of Arizona that could potentially be designated as nonattainment for the 2015 ozone standard. While it appears that only four Arizona counties (Maricopa, Pinal, Yuma, and a very small portion of Gila) are not meeting the health-based standard based on 2013–2015 data, we understand the concerns that you are expressing on their behalf. We will work with ADEQ to explore the various ways that the nonattainment problem can be addressed under the Clean Air Act.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Matthew Davis in the EPA's Office of Congressional and Intergovernmental Relations at davis.matthew@epa.gov or at (202) 564-1267.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

JEFF FLAKE
1ST DISTRICT, ARIZONA

512 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2635

DISTRICT OFFICE
1201 SOUTH ALMA SCHOOL ROAD
SUITE 2950
MESA, AZ 85210
(480) 833-0092

Congress of the United States
House of Representatives

COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEES
EAST ASIA AND THE PACIFIC
AFRICA

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES
COMMERCIAL AND ADMINISTRATIVE LAW
IMMIGRATION AND CLAIMS

COMMITTEE ON RESOURCES
SUBCOMMITTEES
WATER AND POWER
ENERGY AND MINERAL RESOURCES

January 6, 2003

Congressional Relations
Environmental Protection Agency
Aerial Rios Building, N
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Secretary Whitman,

Please consider the enclosed information and forward me the necessary response for reply to my constituent, [redacted] (b) (6).

Please send your response to Mike Haller of my district office, 1201 S. Alma School Rd., Suite 2950, Mesa, Arizona 85210. Thank you for your assistance and cooperation in this matter.

Sincerely,

JEFF FLAKE
Member of Congress

JLF:mh
Enclosure

Haller, Mike

From: Representative Jeff Flake
Sent: Monday, January 06, 2003 8:58 AM
To: Haller, Mike
Subject: FW: WriteRep Responses

---------- Forwarded by Intranet Quorum ----------

From: Write your representative <writerep@www6.house.gov>
To: az01WYR@housemail.house.gov
cc:
Date: 1/3/2003 7:06:54 PM
Subject: WriteRep Responses

Dear Representative Flake:
Please help me.

Prior to purchasing a car this fall, I asked the Arizona Department of Transportation if hybrid vehicles were eligible to ride in the HOV lanes without a passenger during rush hours. They replied that hybrid vehicles ARE eligible to ride in HOV lanes without passengers, and they gave me the links to several statutes that supported their statements. I could have purchased other vehicles with good gas mileage (some cheaper), but I bought a Toyota hybrid just so that I could ride in the HOV lanes from my house to work in Phoenix. I would have gladly purchased an electric vehicle (there is a charging station at work), if one were available to get me to and from Tucson (I'm a part-time student at the U of A). But alas, electric vehicles don't go over 200 miles without recharging.
The week after I bought the new car, I went to ADOT to get my HOV alternate fuel sticker. The ADOT officials told me that the EPA determined that hybrid vehicles do not meet the emission standards to allow them to drive without passengers in the HOV lanes (other hybrid cars already have their stickers/license plates). Apparently for the EPA, it's all or nothing. We have such a pollution problem in the valley that you'd think any effort to control emissions would be welcome. Why can't they phase in their lofty standards over a period of time? The IRS is giving tax credits for the purchase of hybrid cars; does the right hand know what the left hand is doing in the federal government?
Surely there is something that can be done to influence the EPA that they need to revisit this issue. Maybe in 10 years technology will catch up with the EPA's goals, but until then, they need to think outside their small box. I appreciate your help. I will own this car for a long time, and I plan to continue to live in Mesa and work in Phoenix. I don't intend to let this issue die.
Sincerely,
[redacted] (b) (6)
[redacted] (b) (6)
[redacted] (b) (6)

==== Original Formatted Message Starts Here ====

DATE: January 3, 2003 6:50 PM
NAME: [redacted] (b) (6)
[redacted]
ADDR2:
ADDR3:
CITY: (b)
[redacted] (6)
[redacted]

EMAIL: [redacted] (b) (6)

Dear Representative Flake:
Please help me.

Prior to purchasing a car this fall, I asked the Arizona Department of Transportation if hybrid vehicles were eligible to ride in the HOV lanes without a passenger during rush hours. They replied that hybrid vehicles ARE eligible to ride in HOV lanes without passengers, and they gave me the links to several statutes that supported their statements. I could have purchased other vehicles with good gas mileage (some cheaper), but I bought a Toyota hybrid just so that I could ride in the HOV lanes from my house to work in Phoenix. I would have gladly purchased an electric vehicle (there is a charging station at work), if one were available to get me to and from Tucson (I'm a part-time student at the U of A). But alas, electric vehicles don't go over 200 miles without recharging.

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Surely there is something that can be done to influence the EPA that they need to revisit this issue. Maybe in 10 years technology will catch up with the EPA's goals, but until then, they need to think outside their small box. I appreciate your help. I will own this car for a long time, and I plan to continue to live in Mesa and work in Phoenix. I don't intend to let this issue die.

Sincerely,

[redacted] (b) (6)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 17 2003

OFFICE OF
AIR AND RADIATION

The Honorable Jeff Flake
Member, United States
House of Representatives
1201 South Alma School Road, Suite 2950
Mesa, AZ 85210

Dear Congressman Flake:

Thank you for your letter of January 6, 2003, concerning high occupancy vehicle (HOV) lane access for single occupant vehicles. I understand that your constituent, (b) (6) [redacted]s, has asked for clarification on the federal government's policy regarding this subject and I am pleased to assist you in providing information.

Current law, requires a minimum vehicle occupancy of two persons (HOV-2) in order to use HOV lanes. The Department of Transportation's (DOT) Federal Highway Administration retains authority for this statutory requirement. The Environmental Protection Agency (EPA) was granted a one-occupant exemption for a very small percentage of fleet vehicles under the Clean Fuel Fleet Program. This exemption does not apply to any privately-owned vehicles, such as [redacted] car. EPA has no other program or authority relevant to HOV lane access.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Michele McKeever, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3688.

Sincerely,

Jeffrey R. Holmstead
Assistant Administrator

AL-0300067

Congress of the United States
House of Representatives
Washington, DC 20515

September 22, 2010

Lisa P. Jackson
Administrator, U.S. Environmental Protection Agency
Ariel Rios Bldg., 1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Administrator Jackson:

As members of the bipartisan Congressional Sportsmen's Caucus, the largest and most active caucus on Capitol Hill, we are writing to urge you to dismiss the petition to ban the use of lead in fishing products. The attached letter from leading hunting, fishing and conservation organizations clearly points out that there is no scientific basis to warrant such a far reaching ban on traditional fishing equipment. A similar proposal to ban lead fishing tackle was dismissed by the EPA in the mid-1990s, because there was insufficient data to support such a ban – there is no additional data to support a ban today.

The American wildlife management model is the best in the world, and one of the pillars of this model is that the states retain the authority to manage most of their fish and wildlife. These state agencies are already monitoring and addressing any of the localized issues surrounding lead, making this draconian ban not only unnecessary, but intrusive. In a letter to you on this very issue dated September 2nd, the Association of Fish and Wildlife Agencies, which represents the collective perspectives of the 50 state fish and wildlife agencies, concludes, "A national ban on lead fishing sinkers is therefore neither necessary nor appropriate."

The President's "America's Great Outdoors" initiative is aimed at reconnecting Americans to the outdoors; fishing is an accessible, fun, family oriented activity that should be embraced and encouraged as part of this initiative. A ban on traditional fishing tackle will drive up costs substantially and serve as a disincentive for more Americans to get outside and enjoy this great pastime.

There are 60 million recreational anglers in America that contribute $125 billion to our economy annually. Penalizing these men, women and children that are the best stewards of our environment, as well as the financial backbone to fish and wildlife conservation in our country, would be a terrible and unnecessary injustice.

We urge you to deny the petition to ban the use of lead in fishing products.

Sincerely,

Rep. Dan Boren

Rep. Paul Ryan

Rep. Jerry Moran

Rep. Jo Bonner

Rep. John Boozman

Rep. Michael K. Simpson

Rep. Donald A. Manzullo

Rep. Gene Taylor

Rep. Virginia Foxx

Rep. Charles A. Wilson

Rep. Christopher P. Carney

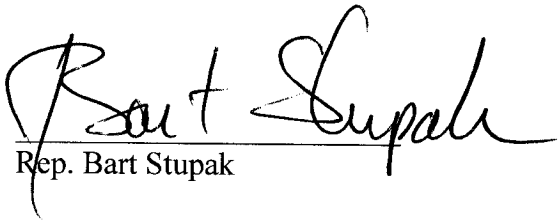
Rep. Ciro D. Rodriguez

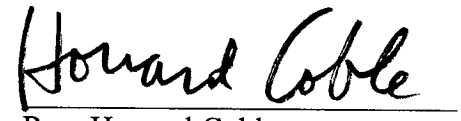
Rep. Marsha Blackburn

Rep. Charles W. Boustany, Jr.

Rep. Michael T. McCaul

Rep. Jeff Miller


Rep. Bart Stupak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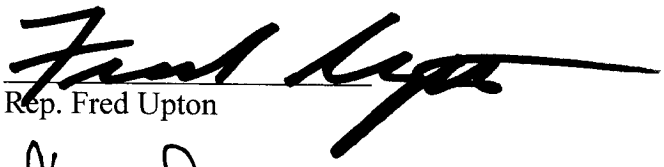
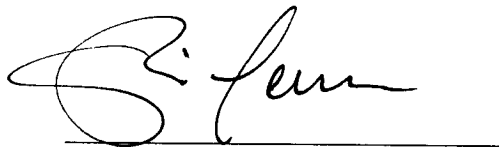

Rep. Fred Upton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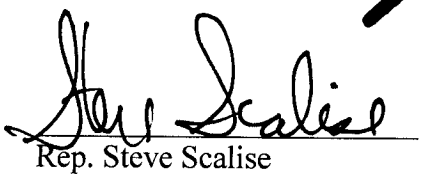
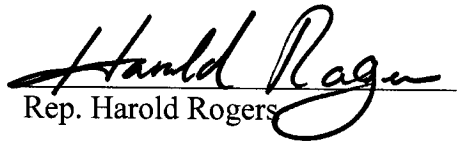

Rep. Steve Scalise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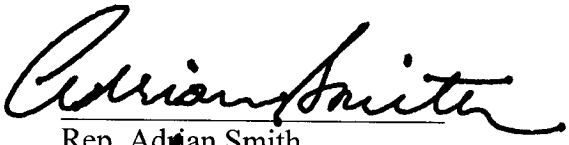
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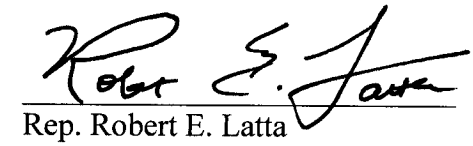
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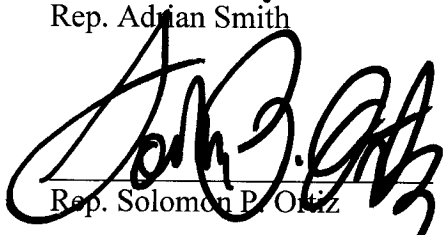
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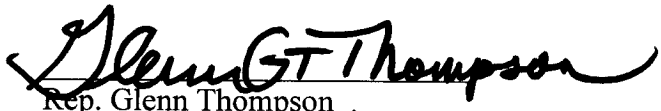
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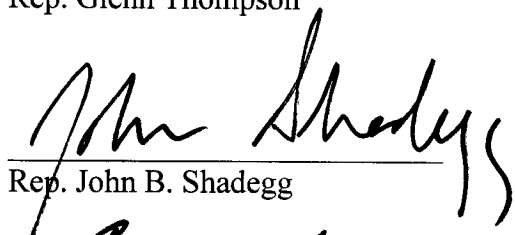
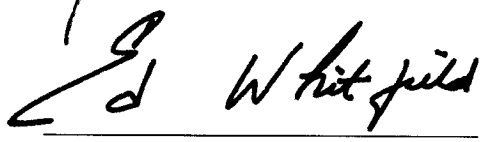
Rep. Steve Austria


Rep. John B. Shadegg

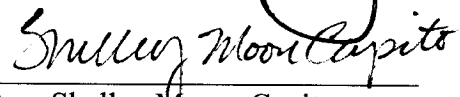

Rep. Sue Wilkins Myrick


Rep. Ed Whitfield


Rep. John A. Boehner


Rep. John Fleming


Rep. Duncan Hunter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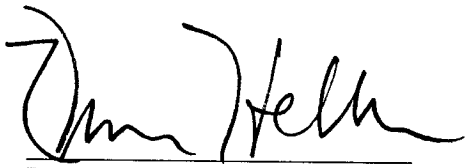
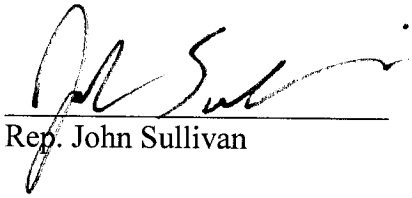

Rep. Dean Heller


Rep. Kathleen A. Dahlkemper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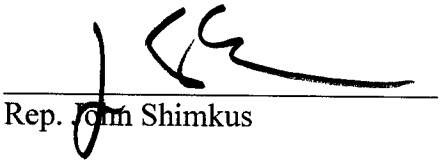
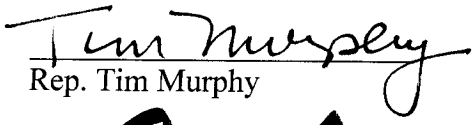
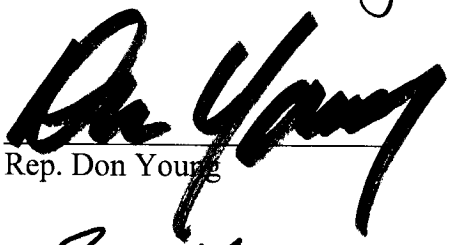

Rep. John Shimkus


Rep. Tim Murphy


Rep. Roy Blunt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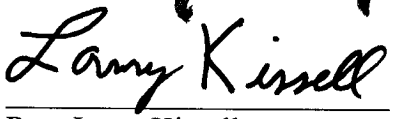
Rep. Candice S. Miller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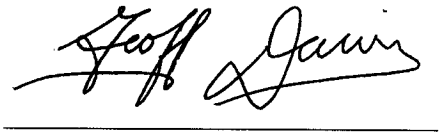
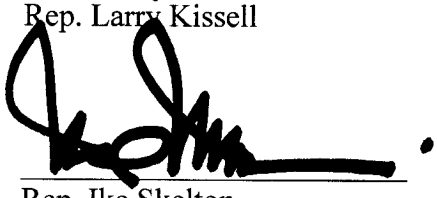

Rep. Geoff Davis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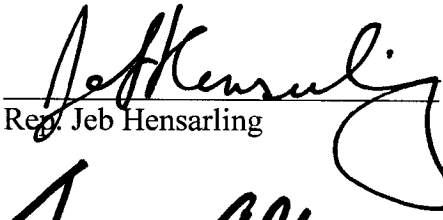
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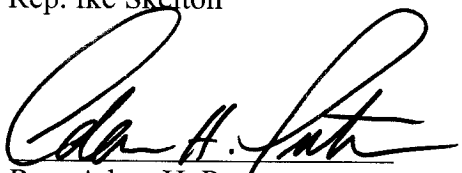
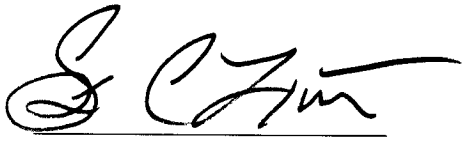

Rep. Adam H. Putnam


Rep. Jason Altmire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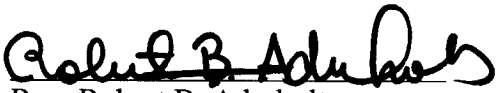
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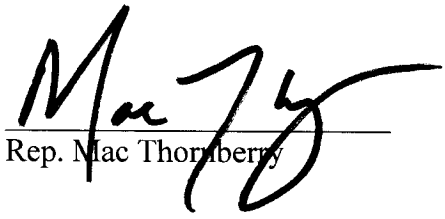
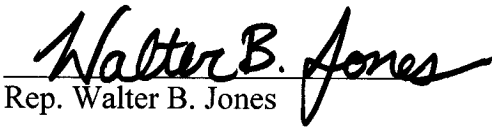
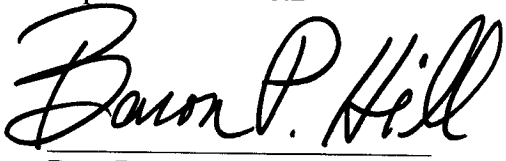

Rep. Mac Thornberry


Rep. Walter B. Jones

Rep. Jason Chaffetz

Rep. Ken Calvert



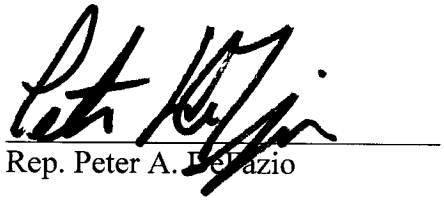
Rep. Baron P. Hill

Rep. Mike McIntyre

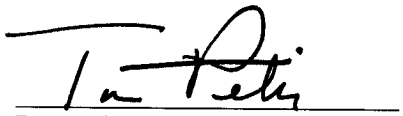
Rep. Robert J. Wittman

Rep. Spencer Bachus

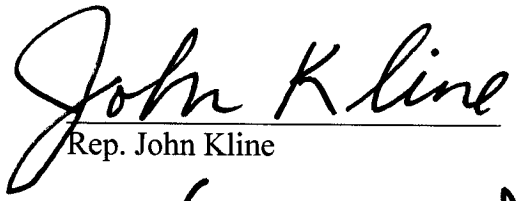
Rep. Michele Bachmann



Rep. Peter A. DeFazio



Rep. Thomas E. Petri



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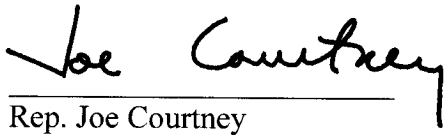
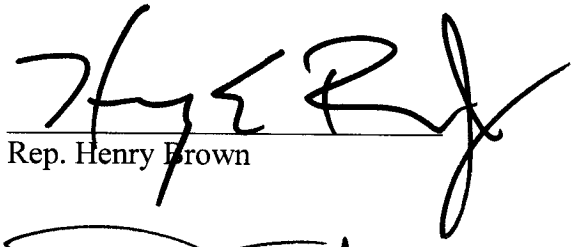
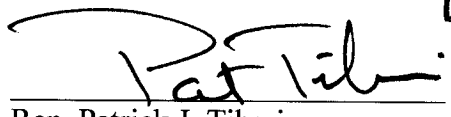


Rep. Joe Courtney



Rep. Henry Brown

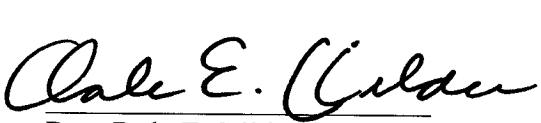
Rep. Paul C. Broun, M.D.



Rep. Patrick J. Tiberi

Rep. David P. Roe

Rep. Barney Frank



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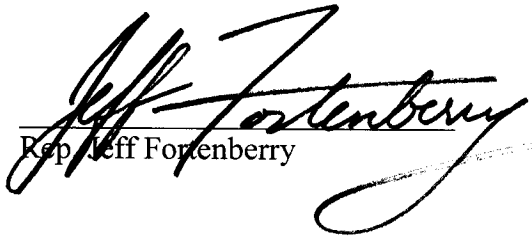
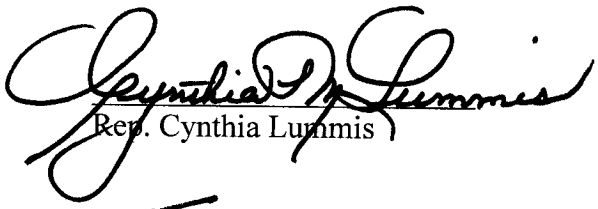


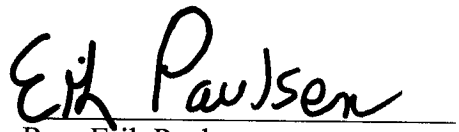
Rep. Jeff Fortenberry

Rep. Lynn Jenkins

Rep. K. Michael Conaway



Rep. Cynthia Lummis



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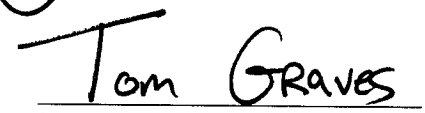

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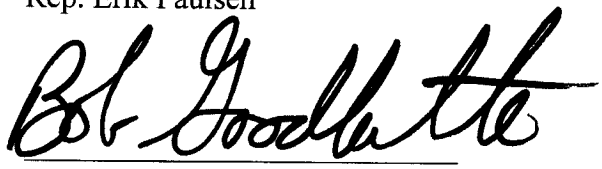


Rep. Bob Goodlatte

Rep. Mike Coffman

Rep. Ron Kind

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 2010

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Dean Heller
U.S. House of Representatives
Washington, DC 20515-2802

Dear Congressman Heller:

Thank you for your letter of October 1, 2010, to the U.S. Environmental Protection Agency's (EPA's) Administrator, Lisa Jackson, regarding an August 3, 2010, petition the Agency has received from the American Bird Conservancy and a number of other groups requesting that the EPA take action under the Toxic Substances Control Act (TSCA) to prohibit the manufacture, processing, and distribution in commerce of lead shot, bullets, and fishing sinkers. EPA denied the portion of the petition related to lead in ammunition on August 27, 2010, because the Agency does not have the legal authority to regulate this type of product under TSCA.

On behalf of the Administrator, I am writing to inform you that we have completed our review of the remaining portion of the petition and have determined that the petitioners did not demonstrate that the request for a uniform national ban of lead in fishing gear is necessary to protect against an unreasonable risk of injury to health or the environment, as required by TSCA section 21. EPA also determined that the petition did not demonstrate that the action requested is the least burdensome alternative to adequately protect against the concerns, as required by section 6 of TSCA. For these reasons, EPA denied the petitioners' request for a national ban on lead in all fishing gear.

EPA believes that the petition does not provide a sufficient justification for why a national ban of lead fishing sinkers and other lead fishing tackle is necessary given the actions being taken to address the concerns identified in the petition. There are an increasing number of limitations on the use of lead fishing gear on some Federal lands, as well as Federal outreach efforts. A number of states have established regulations that ban or restrict the use of lead sinkers and have created state education and fishing tackle exchange programs over the last decade. The emergence of these programs and activities over the past decade calls into question whether the broad rulemaking requested in the petition would be the least burdensome, adequately protective approach, as required by TSCA. We also noted to the petitioners that the prevalence of non-lead alternatives in the marketplace continues to increase.

Again, thank you for your letter and I hope the information on EPA's response to this petition is helpful to you. If you have additional questions, please feel free to contact me or your staff may contact Mr. Sven-Erik Kaiser in EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

Stephen A. Owens
Assistant Administrator

United States Senate

WASHINGTON, DC 20510

November 29, 2010

Lisa P. Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Administrator Jackson,

We are writing to encourage you to consider input from all stakeholders in cultivating the America's Great Outdoors (AGO) initiative. In particular, we are concerned that Americans who are passionate about conserving our public lands for recreation have been overlooked for numerous listening sessions your agencies have held around the country.

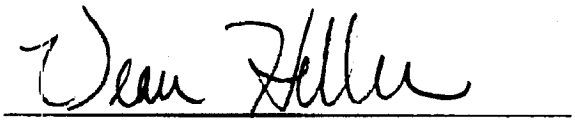
We would also appreciate you forwarding to us all documents, correspondence to or from agency personnel or invitations to individuals or organizations that participated in panel discussions or were otherwise part of the formal program at any AGO listening session.

We would appreciate being updated on the status of your response to our letter. Thank for you for your service to our great country.

Sincerely,

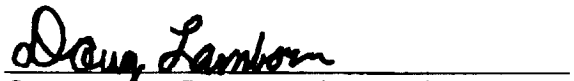
cc: Secretary Tom Vilsack
cc: Secretary Ken Salazar


Congressman Rob Bishop (UT-01)

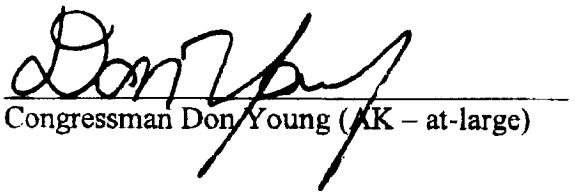

Congressman Dean Heller (NV-02)


Congressswoman Cynthia Lummis (WY-at-large)


Congressman Jason Chaffetz (UT-03)

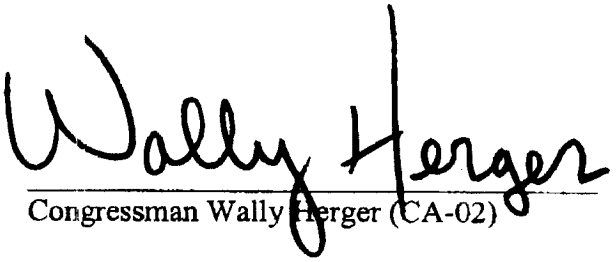

Congressman Doug Lamborn (CO-05)


Congressman Michael Conaway (TX-11)


Congressman Don Young (AK – at-large)


Congressman Tom McClintock (CA-04)


Congressman Denny Rehberg (MT-at-large)


Congressman Wally Herger (CA-02)

MAR 10 2011

The Honorable Dean Heller
House of Representatives
Washington, D.C. 20515

Dear Representative Heller:

Thank you for your November 29, 2010, letter regarding the America's Great Outdoors (AGO) initiative. We appreciate your interest and agree that the outdoor recreation community plays a critical role in fostering the success of this initiative.

This past summer and fall, senior Administration officials traveled around the country to hear from a wide variety of communities and to learn about innovative solutions for conservation, recreation, and reconnecting Americans with the outdoors. This effort included 51 listening sessions throughout the country, including 21 youth listening sessions, and 7 for tribes and tribal youth, all of which resulted in more than 100,000 comments and ideas.

We had the opportunity to interact with participants from a broad range of recreation interests – motorized (snowmobilers, OHV, ORV, ATV, motorcyclists), non-motorized (bicycling, hiking, mountain climbing, canoeing, kayaking, hunting and fishing), as well as organized sports (soccer, football, etc.). We also heard from parents and teachers, conservationists, civic leaders, business owners, state and local elected officials, tribal leaders, farmers and ranchers, historic preservationists, and thousands of young people under the age of 25. People from all ethnic groups, ages and political affiliation shared their passion for our Nation's great natural and cultural heritage.

This diverse representation of stakeholders resulted from our concerted effort to disseminate listening session information as broadly as possible through email, websites and local papers. These perspectives provided Administration officials working on the AGO initiative a much deeper sense of the challenges and opportunities for conservation and outdoor recreation that exist across this great country.

We intentionally varied the formats of the listening sessions to capture different viewpoints and expertise. At all of the sessions, senior members of the Administration spoke briefly on their agencies' involvement and interest in the AGO initiative. In about a quarter of the sessions, we invited local or regional experts to share their knowledge on subjects that are important to the region and important for the agencies to understand.

For instance, in Charleston, South Carolina, USDA organized a panel of seven people from diverse perspectives on conservation and management of long-leaf pine forests. In Montana, we heard from ranchers and sportsmen involved in regional conservation efforts. In Los Angeles, we heard from people working on expanding access to open green spaces and riverways within urban communities. In Philadelphia, we engaged people involved in historic and cultural preservation. In Bangor, Maine, we sought out experts in forestry management and outdoor recreation, including snowmobiling, to share how those uses have been jointly managed. In Minneapolis, we asked the head of Pheasants Forever to share his perspective on wildlife management. And in Grand Island, Nebraska, we asked farmers and conservationists to share their expertise on strategies around Great Plains conservation. Only 13 sessions had panel discussions and all of the sessions were structured to maximize public input through breakout session discussions.

Included with this response is information relating to these sessions, including an extensive list of organizations and stakeholders that were notified of the public listening sessions; a list of all speakers and panel participants from the listening sessions; and copies of handouts and other documents that were distributed as part of the formal program at these events. We also note that the AGO website, found at www.americasgreatoutdoors.gov, contains additional information that has been made available to the public, including the notes from the breakout discussions.

We trust that as you review these materials, you will see that AGO is about preserving and restoring the outdoor places that shape and define the American spirit, and that the report to the President was guided by the input of thousands of Americans. Thank you again for your letter and we look forward to continuing to work with you on this important effort. A similar response is being provided to your colleagues.

Sincerely,

Ken Salazar
Secretary
Department of the Interior

Tom Vilsack
Secretary
Department of Agriculture

Lisa Jackson
Administrator
Environmental Protection Agency

Enclosures

1056373

United States Senate

WASHINGTON, DC 20510

May 26, 2011

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

In November, the public comment period concluded on the Environmental Protection Agency's (EPA's) proposed rulemaking for the regulation of coal combustion residues (CCRs). We write to ask the Administration to rapidly finalize a rule regulating CCRs under subtitle D, the non-hazardous solid waste program of the Resource Conservation and Recovery Act (RCRA).

The release of CCRs from the Tennessee Valley Authority impoundment in December 2008 properly caused the EPA to consider whether CCR impoundments and landfills should meet more stringent standards. All operators should meet appropriate standards, and those who fail to do so should be held responsible. We believe regulation of CCRs under subtitle D will ensure proper design and operations standards in all states where CCRs are disposed.

A swift finalization of regulations under subtitle D offers the best solution for the environment and for the economy. The environmental advantages of the beneficial use of CCRs in products such as concrete and road base are well-established. For example, a study released by the University of Wisconsin and the Electric Power Research Institute in November 2010 found that the beneficial use of CCRs reduced annual greenhouse gas emissions by an equivalent of 11 million tons of carbon dioxide, annual energy consumption by 162 trillion British thermal units, and annual water usage by 32 billion gallons. These numbers equate to removing 2 million cars from our roads, saving the energy consumed by 1.7 million American homes, and conserving 31 percent of the domestic water used in California.

We are concerned that finalizing a rule regulating CCRs under subtitle C of RCRA rule would permanently damage the beneficial use market. Since the EPA first signaled its possible intention to regulate CCRs under subtitle C, financial institutions have withheld financing for projects using CCRs, and some end-users have balked at using CCRs in their products until the outcome of the EPA's proposed rulemaking is known. Already, beneficial use of CCRs has decreased, and landfill disposal has increased. This result is counterproductive but likely to continue as long as the present regulatory uncertainty persists.

State environmental protection agencies have cautioned the EPA that regulating CCRs under subtitle C will overwhelm existing hazardous waste disposal capacity and strain budget and staff resources. Moreover, the bureaucratic and litigation hurdles involved in a subtitle C rule could lead to long delays before storage sites are upgraded or closed, resulting in slower environmental protection.

In two prior reports to Congress, the EPA concluded that disposed CCRs did not warrant regulation under subtitle C of RCRA. Despite this prior conclusion, the EPA's proposed subtitle C option would regulate CCRs more stringently than any other hazardous waste by applying the subtitle C rules to certain inactive and previously closed CCR units. The EPA has never before interpreted RCRA in this manner in over 30 years of administering the federal hazardous waste rules. The subtitle C approach is not supportable given its multiple adverse consequences and the availability of an alternative, less burdensome regulatory option under RCRA's non-hazardous waste rules that, by the EPA's own admission, will provide an equal degree of protection to public health and the environment.

In conclusion, we request that the Administration finalize a subtitle D regulation as soon as possible. The states and the producers of CCRs have raised concerns that should be corrected in a final subtitle D rule, including ensuring that any subtitle D regulations are integrated with and administered by state programs. Subtitle D regulation will improve the standards for CCR disposal, ensure a viable market for the beneficial use of CCRs, and achieve near-term meaningful environmental protection for disposed CCRs.

Thank you very much for your consideration of this important matter. We look forward to your response and to working with you to address this issue in a manner that is both environmentally and economically sound.

Sincerely,

Kent Conrad
United States Senate

Michael B. Enzi
United States Senate

Joe Manchin III
United States Senate

Johnny Isakson
United States Senate

Jerry Moran
United States Senate

John Boozman
United States Senate

Daniel Coats
United States Senate

Roy Blunt
United States Senate

John Hoeven
United States Senate

Roger F. Wicker
United States Senate

Thad Cochran
United States Senate

Claire McCaskill
United States Senate

Jon Tester
United States Senate

Lisa Murkowski
United States Senate

Orrin G. Hatch
United States Senate

Ben Nelson
United States Senate

John Barrasso
United States Senate

Pat Roberts
United States Senate

John Thune
United States Senate

David Vitter
United States Senate

Mary L. Landrieu
United States Senate

Mark R. Warner
United States Senate

Bob Corker
United States Senate

Mike Lee
United States Senate

Mark L. Pryor
United States Senate

Max Baucus
United States Senate

Richard Burr
United States Senate

Richard G. Lugar
United States Senate

Lindsey Graham
United States Senate

Rob Portman
United States Senate

Jim DeMint
United States Senate

Richard C. Shelby
United States Senate

Patrick J. Toomey
United States Senate

John Cornyn
United States Senate

Dean Heller
United States Senate

Lamar Alexander
United States Senate

Mark Begich
United States Senate

Chuck Grassley
United States Senate

Saxby Chambliss
United States Senate

Mark Kirk
United States Senate

Herb Kohl
United States Senate

James E. Risch
United States Senate

John D. Rockefeller IV
United States Senate

Ron Johnson
United States Senate

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 18 2011

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Dean Heller
United States Senate
Washington, D.C. 20510

Dear Senator Heller:

Thank you for your letter of May 26, 2011, to President Barack Obama in which you asked that the U.S. Environmental Protection Agency (EPA) finalize a rule regulating coal combustion residuals (CCR) under Subtitle D of the Resource Conservation and Recovery Act (RCRA) as soon as possible. I appreciate your comments regarding the CCR rule that the EPA proposed on June 21, 2010.

As you note in your letter, the regulation of CCR intended for disposal is appropriate, and the agency agrees with you that operators should meet appropriate standards, or be held accountable. The agency also shares your belief that the beneficial use of CCR, if conducted in a safe and environmentally protective manner, has many environmental advantages and should be encouraged.

Under the proposal, the EPA would regulate the disposal of CCR for the first time. As you know, the proposal sought public comment on two different approaches under RCRA. One option would treat such wastes as a "special waste" under Subtitle C of the statute, which creates a comprehensive program of federally enforceable requirements for waste management and disposal. The second option, as you indicated in your letter, would be to establish standards for waste management and disposal under the authority of Subtitle D of RCRA. The agency is currently reviewing and evaluating the approximately 450,000 public comments received on the proposal, many of which addressed the specific issues raised in your letter, before deciding on the approach to take in the final rule based on the best available science. The agency will issue a final regulation as expeditiously as possible.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Carolyn Levine, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-1859.

Sincerely,

Mathy Stanislaus

Mathy Stanislaus
Assistant Administrator

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

May 24, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

We are deeply concerned by remarks made recently by a senior Environmental Protection Agency (EPA) official regarding enforcement practices in light of the Supreme Court's recent ruling in *Sackett v. EPA* ("*Sackett*"). In its May 7, 2012, edition, *Inside EPA* reported:

> A top EPA official is downplaying the impact of the unanimous High Court ruling that opens up Clean Water Act (CWA) compliance orders to pre-enforcement judicial review, saying it will have little effect on how the agency enforces the water law, while floating several options it is considering for new documents that may be exempt from review. "What's available after *Sackett*? Pretty much everything that was available before *Sackett*," Mark Pollins, director of EPA's water enforcement division, said. [. . .] "Internally, it's same old, same old."

Additionally, a BNA article from May 4, 2012, "EPA Official Sees No Major Shift In Agency's Use of Compliance Orders," also recounted Mr. Pollins' remarks downplaying the Supreme Court's decision in *Sackett*. It is very troubling that an EPA official with water enforcement responsibilities would believe that the Supreme Court's decision in *Sackett* has little effect on how the agency enforces the Clean Water Act.

As you know, in *Sackett v. EPA*, the Supreme Court held that EPA compliance orders are subject to pre-enforcement review by the federal courts. Compliance orders often declare that the recipient is in violation of law and threaten thousands, or even millions, of dollars in fines for the initial violations followed by thousands or millions of dollars in additional fines for not complying with the "compliance order" itself. Thus, EPA's refusal to agree to such review in the first place left the Sackett family, as it has done to many other Americans, in a state of legal limbo—at risk of substantial civil or criminal penalties if they proceeded with development of their private property but without the ability to seek a court order to determine whether EPA was acting in accordance with the Clean Water Act.

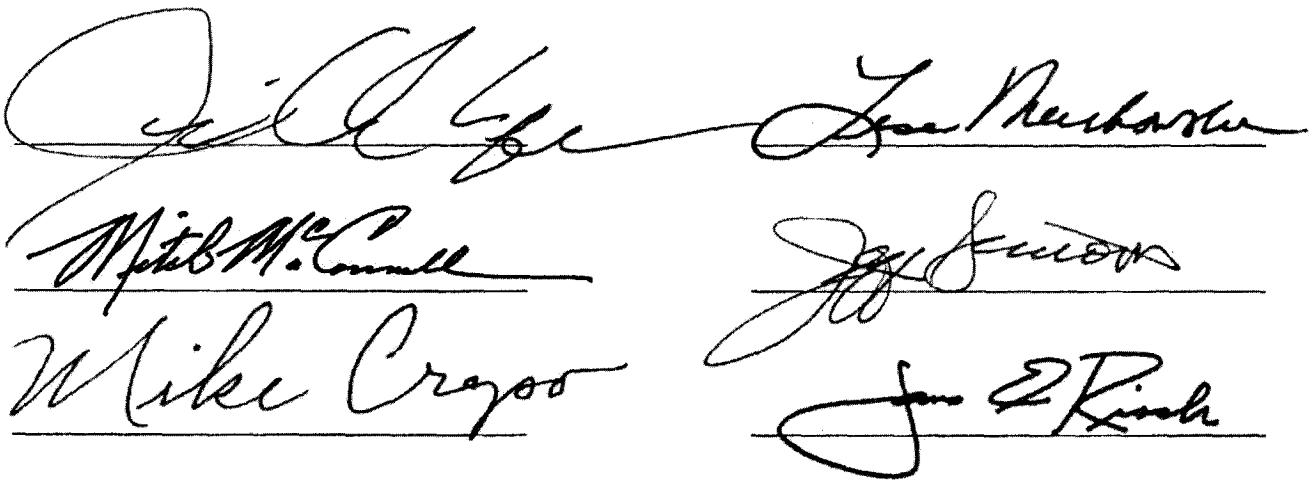
Indeed, the Sacketts faced a terrible choice: Give into EPA's overreaching involvement by foregoing the reasonable use of their private property, or force EPA's hand by proceeding with

development of their property at the risk of bankruptcy or imprisonment. EPA afforded them no opportunity to seek a neutral arbiter's evaluation of EPA's assertion of jurisdiction. No American should be faced with that choice. In fact, the Supreme Court's 9-0 ruling strongly demonstrates the absurdity of EPA's position in this case. Regrettably, we do not believe this is an isolated case with "little effect" on EPA's practices. To the contrary, as the *Wall Street Journal* explained in a March 22, 2012 editorial, "The ordeal of the Sacketts shows once again how [EPA] with a $10 billion budget and 17,000 agents has become a regulatory tyranny for millions of law-abiding Americans." The Congressional Research Service recently found that EPA issues over 1,000 administrative compliance orders annually, which provides ample reason to question how *Sackett* will impact the agency's approach to CWA enforcement.[1]

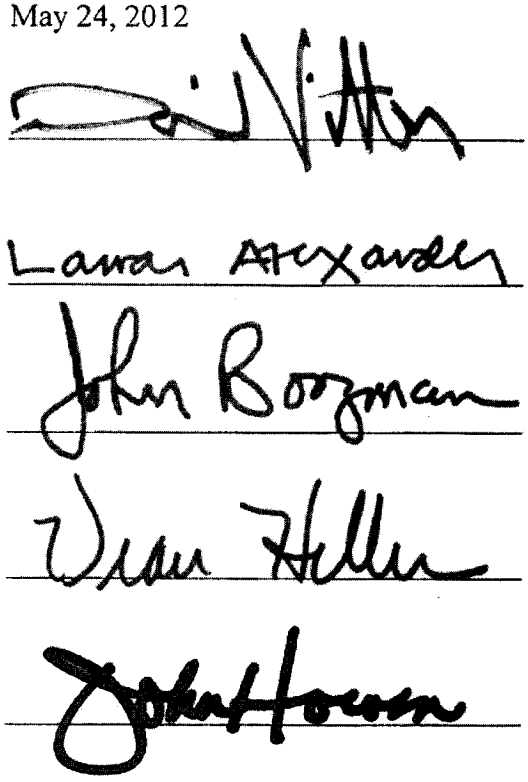
The Court's decision points toward a broader concern: EPA should not use its enforcement authority to intimidate citizens into compliance. As Justice Scalia noted in the majority opinion, "There is no reason to think that the Clean Water Act was uniquely designed to enable the strong-arming of regulated parties into voluntary compliance without judicial review." Nevertheless, as evidenced by these comments made by Mr. Pollins, it seems that EPA plans to continue business as usual and sees no need to change their use of compliance orders in response to the Court's holding. In order to help us understand the steps the EPA is taking following the *Sackett* decision, we request you clarify the comments made by Mr. Pollins and explain how the agency's enforcement office plans to proceed in pursuing CWA enforcement in light of *Sackett*.

Thank you for your prompt attention to this matter.

Sincerely,



[1] CRS Report, *The Supreme Court Allows Pre-enforcement Review of Clean Water Act Section 404 Compliance Orders: Sackett v. EPA* (March 26, 2012).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 10 2012

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Inhofe:

Thank you for your May 24, 2012 letter to Administrator Lisa Jackson regarding the United States Environmental Protection Agency's (the EPA) plans to enforce Clean Water Act (CWA) requirements in light of the Supreme Court's decision in *Sackett v. EPA* which held that CWA section 309(a) administrative compliance orders are now subject to pre-enforcement review by the federal courts. I appreciate the opportunity to discuss the EPA's enforcement program.

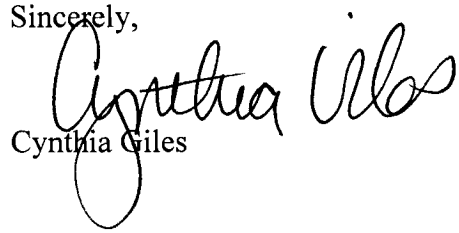
The EPA will, of course, fully comply with the Supreme Court's decision as we work to protect clean water for our families and future generations by using the tools provided by Congress to enforce the CWA. The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all five federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review. We are taking all necessary steps to ensure that compliance orders issued by the agency comply with the Court's mandate. The EPA has directed all enforcement staff to ensure that the regulated community is fully aware of the right to challenge a Section 309(a) administrative compliance order and to include language explicitly informing respondents of this right with any unilateral Section 309(a) administrative compliance order issued by the agency. Attached is a memorandum from Pamela J. Mazakas, Acting Director of the Office of Civil Enforcement, to the regions highlighting the importance of the *Sackett* decision and informing them of the consequent changes to the CWA enforcement program.

In your letter, you express concern about remarks made by an EPA enforcement official at the *ALI ABA Wetlands Law and Regulation Seminar* on May 3, 2012, as reported by the publications *Inside EPA* and *BNA*. Both articles focused solely on a single statement by the EPA official and implied that the *Sackett* decision has not changed the EPA's approach to enforcement of the CWA. However, this single statement taken out of context does not accurately represent the overall message from this presentation or the agency's position that the *Sackett* decision does significantly change the law concerning reviewability of CWA administrative compliance orders. The focus of the presentation and discussion at the May 3, 2012 seminar was that compliance orders issued under 309(a) of the CWA will now be subject to judicial review and that the agency will ensure that its compliance orders are supported by an administrative record that describes the factual and legal basis for the order. It was clear from the entire presentation by the EPA speaker that EPA has and will continue to exercise sound principles of evidence gathering and legal analysis to support its administrative compliance orders, and that the EPA expects that judicial review would reaffirm the factual and legal support for orders issued by the agency. The

EPA has consistently stated since the *Sackett* decision that recipients of CWA section 309(a) compliance orders must be afforded an opportunity to challenge them in court. The agency is confident in the integrity of its administrative enforcement process and, as always, will issue compliance orders only when they are well supported by the facts and the law.

Again, thank you for your letter. If you have any questions, please contact me or have your staff contact Carolyn Levine, Office of Congressional and Intergovernmental Relations, at (202) 564-1859.

Sincerely,



Cynthia Giles

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 19 2012

MEMORANDUM

SUBJECT: Use of Clean Water Act Section 309(a) Administrative Compliance Order Authority after *Sackett v. EPA*

FROM: Pamela J. Mazakas, Acting Director
Office of Civil Enforcement

TO: Addressees

As you know, on March 21, 2012, the Supreme Court ruled unanimously in *Sackett v. EPA*, 132 S. Ct. 1367, that administrative compliance orders issued under Section 309(a) of the Clean Water Act (CWA) are subject to pre-enforcement judicial challenge under the Administrative Procedure Act (APA). The Supreme Court's decision marked a significant change in the law concerning the reviewability of Section 309(a) administrative compliance orders. Prior to the Supreme Court's decision, all of the federal circuit courts to consider the question had held that Section 309(a) administrative compliance orders were not subject to pre-enforcement review.[1] The purpose of this memorandum is to provide guidance on the use of Section 309(a) administrative compliance order authority in response to the *Sackett* decision.

As a result of the Supreme Court's holding, recipients of Section 309(a) administrative compliance orders are now afforded an opportunity to challenge those orders under the APA, before EPA brings an action to enforce the order, a right not previously available to them in the courts. It is therefore incumbent on EPA enforcement staff to ensure that the regulated community, and in particular all recipients of Section 309(a) administrative compliance orders, are fully aware of this new right. Language clearly informing respondents of this right should be included with any unilateral Section 309(a) administrative compliance order issued by the Agency.

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[1] *Southern Pines Assocs. v. United States*, 912 F.2d 713 (4th Cir. 1990); *Southern Ohio Coal Co. v. Office of Surface Mining, Reclamation & Enforcement*, 20 F.3d 1418 (6th Cir.), cert. denied, 513 U.S. 927 (1994); *Hoffman Group, Inc. v. EPA*, 902 F.2d 567 (7th Cir. 1990); *Sackett v. EPA*, 622 F.3d 1139 (9th Cir. 2010), rev'd, 132 S. Ct. 1367 (2012); *Laguna Gatuna, Inc., v. Browner*, 58 F.3d 564 (10th Cir. 1995), cert. denied, 516 U.S. 1071 (1996).

The Supreme Court's decision presents the Agency with an opportunity to evaluate how it can make the best use of limited enforcement resources to achieve compliance with environmental laws. While issuance of Section 309(a) administrative compliance orders remains a valuable tool to ensure compliance with the CWA, enforcement staff should continue to evaluate other enforcement approaches to promote compliance where appropriate in given circumstances. Other tools, such as less formal notices of violation or warning letters, can sometimes be helpful in resolving violations.

EPA enforcement staff should continue the practice of inviting parties to meet and discuss how CWA violations (and amelioration of the environmental impacts of such violations) can be resolved as quickly as possible. The goal of the administrative enforcement process is to address violations preferably by a mutually-agreed upon resolution through measures such as an administrative compliance order on consent. Using consensual administrative compliance orders, when possible, can help to reduce EPA and third party costs where regulated entities are willing to work cooperatively to quickly correct CWA violations and abate potential harm to human health and the environment.

Finally, the judicial review of Section 309(a) administrative compliance orders provides the opportunity to be even more transparent in demonstrating the basis for our enforcement orders. The Agency has historically exercised sound principles of evidence gathering and legal analysis to support its administrative compliance orders and is confident that judicial review would reaffirm the Agency's longstanding practice. The *Sackett* decision underscores the need for enforcement staff to continue to ensure that Section 309(a) administrative compliance orders are supported by documentation of the legal and factual foundation for the Agency's position that the party is not in compliance with the CWA. This will aid in the successful defense of any Section 309(a) administrative compliance order in court, should an order be challenged, and allow us to fulfill our statutory responsibility to address violations affecting the nation's waters.

We will continue to work closely with the Regions, Office of General Counsel, and the Department of Justice on any issues identified as we continue to evaluate and respond to the Supreme Court's decision. Thank you in advance for your ongoing cooperation. If you have additional questions, please contact me or Mark Pollins at (202) 564-4001.

Addressees:
OECA Office Directors and Deputies
Regional Counsels, Regions 1 - 10
Regional Enforcement Divisions Directors, Regions 1 - 10
Regional Enforcement Coordinators, Regions 1 - 10
Water Management Division Directors, Regions 1 - 10
Randy Hill, OWM
Steve Neugeboren, OGC
Letitia Grishaw, EDS/DOJ
Steven Samuels, EDS/DOJ
Benjamin Fisherow, EES/DOJ
Karen Dworkin, EES/DOJ

1131034

United States Senate

WASHINGTON, DC 20510

January 30, 2014

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC

Dear President Obama,

As a consequence of your recent Executive Order relating to your June 2013 Climate Action Plan (CAP), the Environmental Protection Agency (EPA) has conducted "listening sessions" in anticipation of proposing a rule designed to address emissions of greenhouse gases from existing power plants. Leaving aside whether EPA even has the legal authority to do this, as well as the dubious value of conducting "listening sessions" far from the homes of many of those most likely to be affected, we write to urge that you consider the burden to ratepayers before moving forward with plans to increase regulation of the existing power generation fleet.

In 2009, the American Clean Energy and Security Act, commonly known as "Waxman-Markey," passed the Democratic-controlled House, but was not even considered in the Senate. The central provision of that legislation would have placed a cap on greenhouse gas emissions, which would then be sharply reduced over time. The legislation contemplated a final target of roughly 80% below 2005 levels by 2050. This bill was rejected by Congress for a variety of reasons, including primarily the tremendous costs it would impose on consumers and the economy for little or no benefit. For example, one study found that the bill would raise electricity rates by 90% (after adjusting for inflation).[1]

Your June 2013 CAP announcement differs little from Waxman-Markey. Your CAP reflects the goal you announced in 2009 to reach an 80% emissions reduction by 2050 below 1990 levels.[2] Even if met, this goal, which was developed with no input from Congress, will have no measurable effect on global temperatures.

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[1] William W. Beach, Ben Lieberman, Karen Campbell, and David W. Kreutzer, *Son of Waxman-Markey: More Politics Makes for a More Costly Bill*, Heritage Foundation (June 16, 2009), http://www.heritage.org/research/reports/2009/05/son-of-waxman-markey-more-politics-makes-for-a-more-costly-bill

[2] Matthew Wald, *Energy Secretary Optimistic on Obama's Plan to Reduce Emissions*, N.Y. Times (June 27, 2013), http://www.nytimes.com/2013/06/28/us/politics/energy-secretary-optimistic-on-obamas-plan-to-reduce-emissions.html?_r=0.

The goal will nonetheless cost consumers in the form of increased prices for energy and anything made, grown, or transported using energy. These new costs will result in less disposable income in families' pockets. That means less money to spend on groceries, doctors' visits, and education. In short, low cost energy is critical to human health and welfare.

For some ratepayers, like the millions of rural electric cooperative consumers in the country, coal makes up around 80% of their electricity. According to the 2009 Bureau of Labor Statistics Consumer Expenditure Survey, nearly 40 million American households earning less than $30,000 per year spend almost 20% or more of their income on energy.[3] The most vulnerable families are those hit the hardest by bad energy policies and high utility bills.

For consumers, your Administration's actions will mean goods are costlier to produce and therefore costlier to purchase. Manufacturers and employers will face higher costs of capital and labor. What's worse, as noted by a 2003 Congressional Budget Office (CBO) report, these are the types of losses that cannot be offset with subsidies or other forms of assistance. As a result these costs will be borne solely and directly by American workers and consumers.[4]

Manufacturers and companies will face higher production costs if they are denied access to affordable energy, and instead be forced to use costlier, less reliable forms of energy. These businesses will either pass these costs along to consumers, or their profits will suffer and threaten their viability.

Either outcome is unacceptable given that America is on the verge of a manufacturing renaissance. A large part of our manufacturing success has been due to the inexpensive and reliable electricity that this country currently benefits from. Low price natural gas is a part of this, as is coal, which at 40% of our electricity mix is still the main source of base load power for our nation.

Recent studies have predicted that the U.S. is steadily becoming one of the lowest-cost countries for manufacturing in the developed world. The study estimates that by 2015, average manufacturing costs in advanced economies such as Germany, Japan, France, Italy, and the U.K. will be up to 18% higher than in the United States.[5]

This should come as no surprise. The fact is that going "all-in" on renewables has significantly weakened the stability of many European Union (EU) countries' electricity generation, caused prices to skyrocket, and has left ratepayers footing the exorbitant bill. The EU subsidies for wind

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[3] Department of Labor, U.S. Bureau of Labor Statistics, Report 1029, *Consumer Expenditures in 2009* (May, 2011), available at http://www.bls.gov/cex/csxann09.pdf.

[4] Congressional Budget Office, *Shifting the Cost Burden of a Carbon Cap-and-Trade Program* (July, 2003), available at http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/44xx/doc4401/07-09-captrade.pdf.

[5] Harold L. Sirkin, Michael Zinser, and Justin Rose, *The U.S. as One of the Developed World's Lowest-Cost Manufacturers: Behind the American Export Surge*, bcg.perspectives, (Aug. 20, 2013), https://www.bcgperspectives.com/content/articles/lean_manufacturing_sourcing_procurement_behind_american_export_surge/

and solar that began almost a decade ago in the name of ending reliance on fossil fuels have saddled customers with an increase of almost 20% in the cost of electricity for homes and businesses over the past four years.[6]

As an illustration, Germans will be paying more for electricity than any other major participant in the EU, according to the Household Energy Price Index for Europe. In September, Germans paid 40 cents per kilowatt hour (kWh) of electricity. Even the ratepayers in Connecticut, who suffer the highest electricity rates in the U.S. (17 cents per kWh), pay less than half that.[7]

Whatever our disagreements might be on how best to approach a changing climate, we think we can all agree that whatever we do should not burden ratepayers and consumers, especially middle and low-income families, with new costs. We therefore implore you to avoid any actions which damage ratepayers throughout this country, especially when those actions result in no measurable benefits and no measurable effects on the very thing that the actions are designed to address.

Sincere regards,

Roy Blunt
U.S. Senator

Lamar Alexander
U.S. Senator

John Barrasso
U.S. Senator

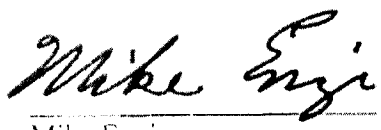
John Boozman
U.S. Senator

Dan Coats
U.S. Senator

John Cornyn
U.S. Senator

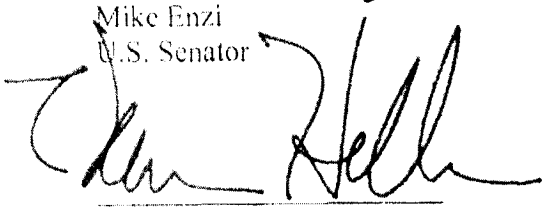
[6] Geraldine Amiel, *Energy Bosses Call for End to Subsidies for Wind, Solar Power*, Wall St. J. (Oct. 11, 2013), http://online.wsj.com/news/articles/SB10001424052702303382004579129182510803694.

[7] William Pentland, *Berlin's Electric Rates Become Highest In Europe*, Forbes (Oct. 27, 2013), http://www.forbes.com/sites/williampentland/2013/10/27/berlins-ballooning-electricity-rates-become-highest-in-europe/.

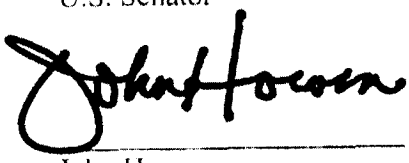


Mike Enzi
U.S. Senator

Deb Fischer
U.S. Senator



Dean Heller
U.S. Senator

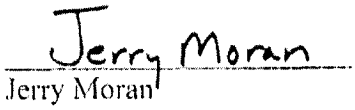


John Hoeven
U.S. Senator

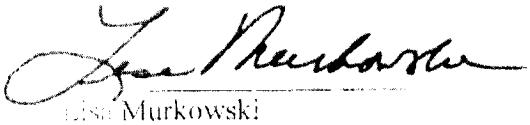
Jim Inhofe
U.S. Senator

Mike Johanns
U.S. Senator

Joe Manchin
U.S. Senator

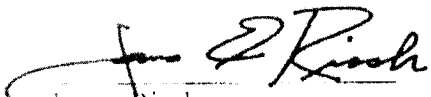


Jerry Moran
U.S. Senator

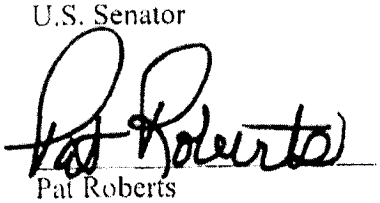


Lisa Murkowski
U.S. Senator

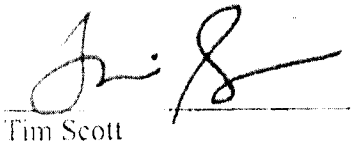
Rob Portman
U.S. Senator



James Risch
U.S. Senator

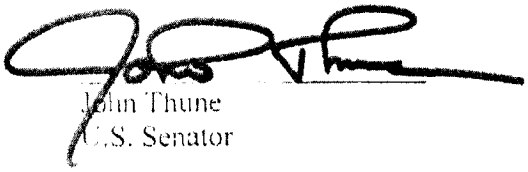


Pat Roberts
U.S. Senator

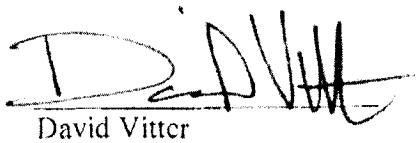


Tim Scott
U.S. Senator

Jeff Sessions
U.S. Senator



John Thune
U.S. Senator



David Vitter
U.S. Senator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 5 2014

OFFICE OF
AIR AND RADIATION

The Honorable Dean Heller
United States Senate
Washington, D.C. 20510

Dear Senator Heller:

Thank you for your letter of January 30, 2014, to President Obama regarding the Climate Action Plan and the upcoming carbon pollution guidelines for existing power plants and standards for modified and reconstructed power plants that the U.S. Environmental Protection Agency will propose in June 2014.

In June 2013, President Obama called on agencies across the federal government, including the EPA, to take action to cut carbon pollution to protect our country from the impacts of climate change, and to lead the world in this effort. The President also directed the EPA to work with states, as they will play a central role in establishing and implementing standards for existing power plants, and, at the same time, with leaders in the power sector, labor leaders, non-governmental organizations, other experts, tribal officials, other stakeholders, and members of the public, on issues informing the design of carbon pollution standards for power plants.

Your letter expressed concern about the burden on ratepayers, including consumers and manufacturers, from carbon pollution regulations on existing power plants. The EPA shares your concern over potential electricity price impacts of regulations on the American people. As we consider guidelines for existing power plants, the EPA is engaged in vigorous and unprecedented outreach with the public, key stakeholders, and the states. We are doing this because we want—and need—all available information about what is important to each state and stakeholder. We know that the guidelines will require flexibility and sensitivity to state and regional differences.

To this end, we continue to welcome feedback and ideas from you as well as your constituents about how the EPA should develop and implement carbon pollution guidelines for existing power plants under the Clean Air Act. When we issue the draft guidelines in June 2014, a more formal public comment period will follow, as with all rules, and more opportunities for public hearings and stakeholder outreach and engagement. We look forward to hearing what you think about the draft guidelines at that time, too.

Many Americans are also concerned about the impacts of climate change on the American people and on people around the world. Observed data shows that the climate in the U.S. is already changing. Severe heat waves are becoming more intense and frequent, increases in sea level put our coasts at risk, and rising temperatures and drought have led to an increase in wildfires—all of which threaten human health and welfare. Snow and rainfall patterns are shifting and more extreme climate events, such as heavy rainstorms and record high temperature, are taking place. Arctic sea ice is shrinking, and the oceans are becoming more acidic. Climate change is also expected to worsen regional ground-level

ozone pollution, resulting in harmful health impacts such as decreased lung function, aggravated asthma, increased emergency room visits, and premature death. Reducing the pollution that contributes to climate change is critically important to the protection of Americans' health and the environment upon which our economy depends.

Responding to climate change is an urgent public health, safety, national security, economic, and environmental imperative that presents great challenges and great opportunities not only here in the United States, but also around the world. The continued leadership of the EPA domestically and the success of the Clean Air Act for more than 40 years give weight to our efforts to work with international partners to address their emissions. Our global leadership has already inspired significant efforts by our partner countries towards emission reductions of their own.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or (202) 564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

United States Senate

WASHINGTON, DC 20510

March 31, 2014

The Honorable Thomas E. Perez, Secretary of Labor, Co-Chair
The Honorable Jeh Johnson, Secretary of Homeland Security, Co-Chair
The Honorable Gina McCarthy, Administrator, Environmental Protection Agency, Co-Chair
Interagency Working Group on Improving Chemical Facility Safety and Security
OSHA Docket Office
Docket No. OSHA-2013-0026
Technical Data Center
Room N-2625, OSHA
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

To the Interagency Working Group on Improving Chemical Facility Safety and Security:

We are contacting you to express concern about the potential regulation of ammonium nitrate (AN) under the Environmental Protection Agency's (EPA) Risk Management Program (RMP). Nearly 75% of the AN consumed in the United States is used in the manufacture of explosives, and AN accounts for about 90% of all explosives by weight. There is no viable substitute for AN in the explosives industry, and without explosives mining, quarrying and other essential industries could not function.

As part of its work in implementing Executive Order (EO) 13650, the Interagency Working Group (IWG) is tasked with developing options to improve the safety and security of our nation's chemical facilities. The EO has its roots in the tragic accidental detonation of AN in West, TX, and the IWG is specifically charged (among other things), to identify ways in which the safety of AN management and storage can be enhanced under existing regulatory and policy authorities.

Pursuant to Section 6(a) of the EO, the IWG recently released a Solicitation of Public Input describing the various safety and security options it is considering. One such option is the possible expansion of the RMP to include AN. We urge you to reject this option. A more direct, relevant, and effective means of ensuring the safe handling of AN is already extant in regulations administered by the Occupational Safety & Health Administration (OSHA) at 29 CFR 1910.109(i). In addition, regulations of the Mine Safety and Health Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Department of Homeland Security have proven effective to ensure safety at mine sites. These rules adequately address the risks posed by AN.

At the Senate Environment and Public Works Committee's June 27, 2013 hearing on the West, TX tragedy, Rafael Moure-Eraso, Chairman of the Chemical Safety & Hazard Investigation

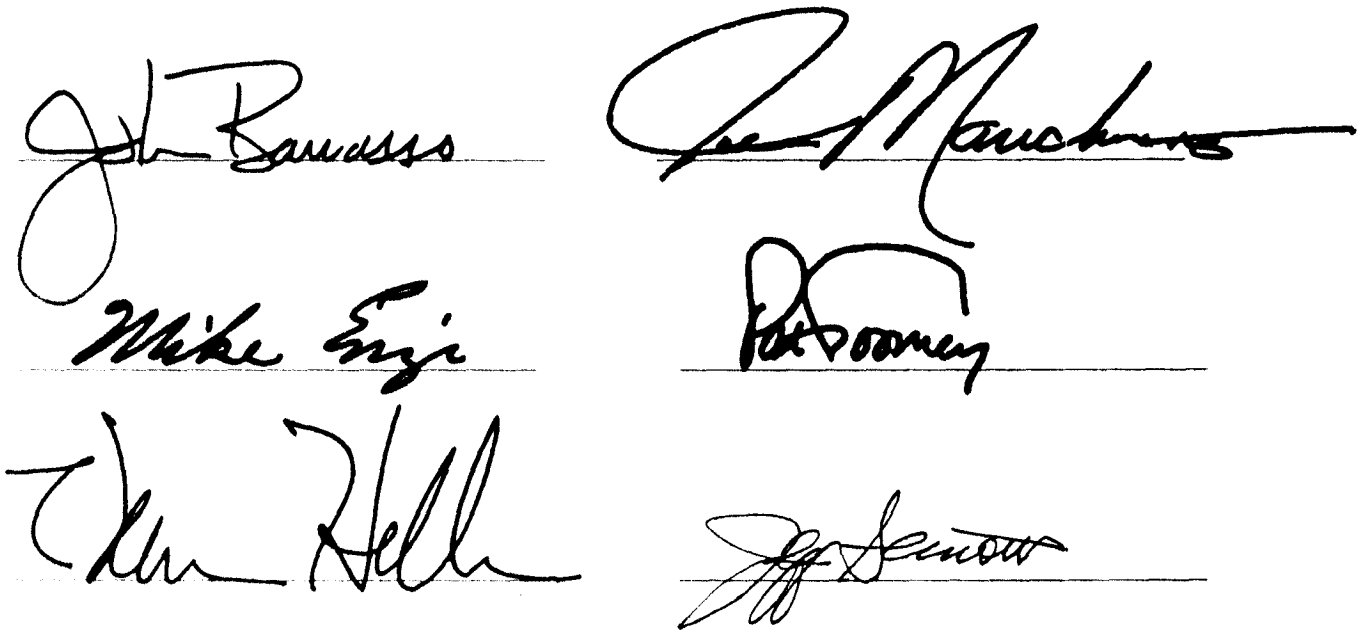
Board recommended that AN be added to EPA's RMP list. At that time, Chairman Moure-Eraso was asked whether he was aware of any accidental detonations of AN where OSHA's regulations had been followed. He replied that he was not aware of any. Following his testimony, Dr. Sam Mannan, of the Mary Kay O'Connor Process Safety Center at Texas A&M, testified that compliance with OSHA's AN regulations could have prevented or mitigated the incident.

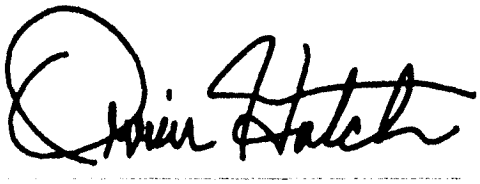
OSHA has demonstrated its commitment to enforcing its AN standard. On October 9, 2013, OSHA issued 24 citations to the owner of the West Fertilizer facility. Eight of those citations concerned violations of the agency's AN rules, including the failure to properly store AN by not eliminating sources of combustible materials, installing necessary fire walls, and limiting bulk quantities of the material. The facility was also cited for not providing proper ventilation or fire suppression in the event of a fire.

We appreciate the serious and important task the IWG has been given in implementing the EO. The safety and security of our nation's chemical facilities, our workers, and our communities is vital. In that regard, we urge you to recommend that OSHA's existing AN standard be bolstered to address the issues presented by the West, TX tragedy, and that efforts be made to increase awareness and enforcement of its requirements. Imposing additional regulatory burdens on compliant facilities by including AN in the RMP will do nothing to protect workers and the public from companies that, either through ignorance or intransigence, avoid compliance with the nation's safety rules.

We look forward to reviewing the IWG's final recommendations.

Sincerely,





Cc: The Honorable Eric H. Holder, Jr., Attorney General
Cc: The Honorable Thomas J. Vilsack, Secretary of Agriculture
Cc: The Honorable Anthony Foxx, Secretary of Transportation

UNITED STATES SENATOR
JOHN BARRASSO

307 Dirksen Senate Office Building, Washington, D.C. 20510

FACSIMILE TRANSMISSION

To: Honorable Gina McCarthy, Administrator, Environmental Protection Agency

Fax number: 202-501-1450

From:

3 **Pages following this cover sheet.**

NOTES: If you have questions contact Brian Clifford at 202-224-6441.

1142909

United States Senate

WASHINGTON, DC 20510

June 3, 2014

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

We write to express our concerns with your proposed rule for existing power plants emissions of greenhouse gases.

Our primary concern is that the rule as proposed will result in significant electricity rate increases and additional energy costs for consumers. These costs will, as always, fall most heavily on the elderly, the poor, and those on fixed incomes. In addition, these costs will damage families, businesses, and local institutions such as hospitals and schools. The U.S. Chamber of Commerce recently unveiled a study indicating that a plan of this type would increase America's electricity bills, decrease a family's disposable income, and result in job losses.

This proposed rule continues your Administration's effort to ensure that American families and businesses will pay more for electricity, an important goal emphasized during your initial campaign for President, and suffer reduced reliability as well. Removing coal as a power source from the generation portfolio – which is a direct and intended consequence of your Administration's rule – unnecessarily reduces reliability and market flexibility while increasing costs. As you are aware, low-income households spend a greater share of their paychecks on electricity and will bear the brunt of rate increases.

In your haste to drive coal and eventually natural gas from the generation portfolio, your Administration has disregarded whether EPA even has the legal authority under the Clean Air Act to move forward with this proposal, the dubious benefit of prematurely forcing the closure of even more base load power generation from America's electric generating fleet, and the obvious signal this past winter's cold snap sent regarding our continued need for reliable, affordable coal-fired generation.

In fact, your existing source proposal goes beyond the plain reading of the Clean Air Act, and it, like your Climate Action Plan, includes failed elements from the cap-and-trade program rejected by the United States Senate. You need only look back to June 2008 for a repudiation of that type of approach by the United States Senate. On June 2, 2008, the Senate debate began on S. 3036,

the Climate Security Act, a cap-and-trade bill, and ended in defeat on June 6, when the Senate refused to invoke cloture. Since that time, Majority Leader Harry Reid has avoided votes that would provide a record of the Senate's ongoing and consistent disapproval of your unilateral action.

Including emissions sources beyond the power plant fence as opposed to just those emissions sources inside the power plant fence creates a cap-and-trade program. As you noted in the wake of the initial failure of cap-and-trade, "There are many ways to skin a cat," and your Administration seems determined to accomplish administratively what they failed to achieve through the legislative process.

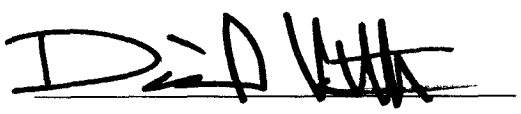
At a time when manufacturers are moving production from overseas to the U.S. and investing billions of dollars in the process, we are very concerned that an Administration with a poor management record decided to embark on a plan that will result in energy rationing, pitting power plants against refineries, chemical plants, and paper mills, for the ability to operate when coming up against EPA's emissions requirements. A management decision that eliminates access to abundant, affordable power puts U.S. manufacturing at a competitive disadvantage.

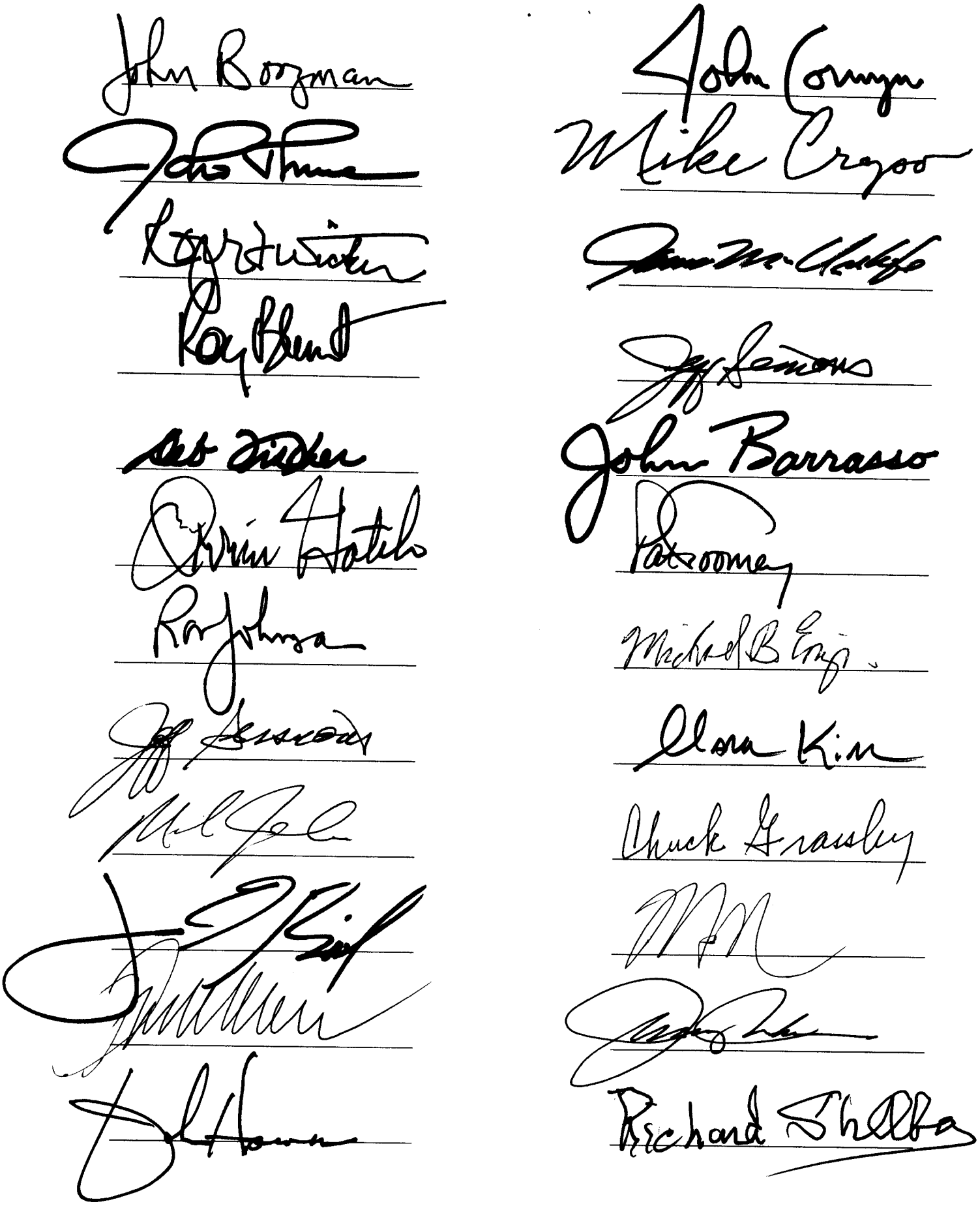
Moreover, there is substantial reason and historical experience to justify our belief that at the end of the rulemaking process, EPA will use its authority to constrain State preferences with respect to program design, potentially going so far as dictating policies that restrict when American families can do the laundry or run the air conditioning. Such impositions practically guarantee that costs, which will of course be passed along to ratepayers, will be maximized, the size and scope of the federal government will expand, and the role of the States in our system of cooperative federalism will continue to diminish.

Finally, we are concerned that there is almost no assessment of costs that will be imposed by this program. Again, if history is any guide, the costs imposed on U.S. businesses and families will be significant and far exceed EPA's own estimate. More disturbingly, the benefits that may result from this unilateral action – as measured by reductions in global average temperature or reduced sea level rise, or increase in sea ice, or any other measurement related to climate change that you choose – will be essentially zero. We know this because in 2009, your former EPA Administrator testified that "U.S. action alone would not impact world CO2 levels." If these assumptions are incorrect, please don't hesitate to provide us with the data that proves otherwise.

We strongly urge you to withdraw this rule.

Sincerely,





Lindsey Graham

Rob Portman

Lamar Alexander

Richard C. Shelby

Saxby Chambliss

Thad Cochran

Pat Roberts

Jerry Moran

Mitch McConnell

Jim Inhofe

MAR 10 2011

The Honorable Dean Heller
House of Representatives
Washington, D.C. 20515

Dear Representative Heller:

Thank you for your November 29, 2010, letter regarding the America's Great Outdoors (AGO) initiative. We appreciate your interest and agree that the outdoor recreation community plays a critical role in fostering the success of this initiative.

This past summer and fall, senior Administration officials traveled around the country to hear from a wide variety of communities and to learn about innovative solutions for conservation, recreation, and reconnecting Americans with the outdoors. This effort included 51 listening sessions throughout the country, including 21 youth listening sessions, and 7 for tribes and tribal youth, all of which resulted in more than 100,000 comments and ideas.

We had the opportunity to interact with participants from a broad range of recreation interests – motorized (snowmobilers, OHV, ORV, ATV, motorcyclists), non-motorized (bicycling, hiking, mountain climbing, canoeing, kayaking, hunting and fishing), as well as organized sports (soccer, football, etc.). We also heard from parents and teachers, conservationists, civic leaders, business owners, state and local elected officials, tribal leaders, farmers and ranchers, historic preservationists, and thousands of young people under the age of 25. People from all ethnic groups, ages and political affiliation shared their passion for our Nation's great natural and cultural heritage.

This diverse representation of stakeholders resulted from our concerted effort to disseminate listening session information as broadly as possible through email, websites and local papers. These perspectives provided Administration officials working on the AGO initiative a much deeper sense of the challenges and opportunities for conservation and outdoor recreation that exist across this great country.

We intentionally varied the formats of the listening sessions to capture different viewpoints and expertise. At all of the sessions, senior members of the Administration spoke briefly on their agencies' involvement and interest in the AGO initiative. In about a quarter of the sessions, we invited local or regional experts to share their knowledge on subjects that are important to the region and important for the agencies to understand.

For instance, in Charleston, South Carolina, USDA organized a panel of seven people from diverse perspectives on conservation and management of long-leaf pine forests. In Montana, we heard from ranchers and sportsmen involved in regional conservation efforts. In Los Angeles, we heard from people working on expanding access to open green spaces and riverways within urban communities. In Philadelphia, we engaged people involved in historic and cultural preservation. In Bangor, Maine, we sought out experts in forestry management and outdoor recreation, including snowmobiling, to share how those uses have been jointly managed. In Minneapolis, we asked the head of Pheasants Forever to share his perspective on wildlife management. And in Grand Island, Nebraska, we asked farmers and conservationists to share their expertise on strategies around Great Plains conservation. Only 13 sessions had panel discussions and all of the sessions were structured to maximize public input through breakout session discussions.

Included with this response is information relating to these sessions, including an extensive list of organizations and stakeholders that were notified of the public listening sessions; a list of all speakers and panel participants from the listening sessions; and copies of handouts and other documents that were distributed as part of the formal program at these events. We also note that the AGO website, found at www.americasgreatoutdoors.gov, contains additional information that has been made available to the public, including the notes from the breakout discussions.

We trust that as you review these materials, you will see that AGO is about preserving and restoring the outdoor places that shape and define the American spirit, and that the report to the President was guided by the input of thousands of Americans. Thank you again for your letter and we look forward to continuing to work with you on this important effort. A similar response is being provided to your colleagues.

Sincerely,

Ken Salazar
Secretary
Department of the Interior

Tom Vilsack
Secretary
Department of Agriculture

Lisa Jackson
Administrator
Environmental Protection Agency

Enclosures

DEAN HELLER
NEVADA
(202) 224-6244

COMMITTEES:
ENERGY AND NATURAL RESOURCES
COMMERCE, SCIENCE, AND TRANSPORTATION
BANKING, HOUSING, AND URBAN AFFAIRS
SPECIAL COMMITTEE ON AGING
VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510

September 9, 2014

Laura Vaught
Associate Administrator for Congressional and
Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Ave., NW, Room 3426 ARN
Washington, DC 20460

RE: (b) (6)

Dear Ms. Vaught,

I have received the enclosed correspondence from my constituent (b) (6), concerning the Agency's proposed greenhouse gas rules for new and existing power plants.

The needs of Nevada's constituents should be a priority. Thank you for reviewing the enclosed concerns and providing a response to the constituent. Should you need any further information, please feel free to contact my staff.

Thank you for your prompt and courteous assistance.

Sincerely,

DEAN HELLER
U.S. Senator

Correspondence Snapshot for Activity #2455382

Created By ccadmin on 9/9/2014 12:02:00 AM
Modified By RGreen on 9/9/2014 8:31:00 AM

CONSTITUENT INFORMATION

(b) (6)

3.

INCOMING

received by	ccadmin
received date	9/9/2014
in type	EML
assigned staff	RLeavitt
interest code	ENV
reference #	
owner	ccadmin
file location	

description

message

Dear Senator Heller,

As my public servant, can you please ensure my comments get sent to the EPA. Also, please acknowledge to me that the EPA has received my comments.

(b) (6) w

Comments on EPA Docket ID No. EPA-HQ-OAR- 2013-0602

EPA is attempting to impose a new regulatory framework on states that will transform how electricity is generated, distributed, transmitted, and used. This rule will have acceptable impact (low risk) on competition, while promoting reliably affordable electricity to the American consumer.

The EPA estimates that its power plant rule will cause nationwide electricity price increases of between 6% and 7% in 2020, and up to 12% in some locations. This is far lower than if we do not change the energy rules. While annual projected compliance costs may be around $6B in 2020, rising up to $8.8B in 203, the jobs and economic stimuli created by the possible rule changes may be 2 or 3 times greater. Furthermore, the EPA proposed changes will slightly impact small businesses as they will push the cost down or find additional means of saving.

The EPA carbon rules will increase reliability risks to an acceptable level, but without the changes, brownouts and blackouts will increase. EPA should move forward with this regulation as quickly as possible. We the People do not need the self-serving Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) to push their preferred agenda..

Any regulatory approach for power plants may have minimal impact on global greenhouse gas emissions, but we must start the change process now. The EPA's regulations will impose billions in costs on the U.S. economy but create many times more economic stimuli. Therefore, I request that EPA move forward on the power plant rule and not extend the comment period beyond the current 120-day length.

I believe that EPA should move forward with regulations that benefit the economy and the constituency,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 17 2014

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Dean Heller
United States Senate
Washington, DC 20510

Dear Senator Heller:

Thank you for your letter of September 9, 2014, to the U.S. Environmental Protection Agency forwarding the concerns of your constituent, (b) (6) , regarding the Clean Power Plan for Existing Power Plants. You asked us to respond to (b) (6) directly; a copy of that response is enclosed.

Again, thank you for your letter. If you have any questions, please feel free to contact me at 202-564-5200 or your staff may contact Kevin Bailey in EPA's Office of Congressional and Intergovernmental Relations at 202-564-2998.

Sincerely,

Joyce K. Frank

Joyce K. Frank
Principal Deputy Associate Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 17 2014

OFFICE OF
AIR AND RADIATION

(b) (6)

(b) (6)

I am responding to a September 9, 2014, letter from Senator Dean Heller on your behalf to the U.S. Environmental Protection Agency. Senator Heller asked that we respond to your letter regarding the Clean Power Plan for Existing Power Plants that was signed by the EPA Administrator Gina McCarthy on June 2, 2014, and published in the *Federal Register* on June 18, 2014.

Climate change induced by human activities is one of the greatest challenges of our time. It already threatens human health and welfare and our economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet. Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions. The proposed Clean Power Plan builds on what states, cities and businesses around the country are already doing to reduce carbon pollution and establishes a flexible process for states to develop plans to reduce carbon dioxide that meet their needs.

We will place your comments in the docket for this rulemaking. In regard to your request regarding the comment period, the EPA did decide to extend the comment period by 45 days, in order to get the best possible advice and data to inform a final rule. The public comment period remains open until December 1, 2014. We welcome input from the broad spectrum of stakeholders on this important matter.

Again, thank you for your letter. I appreciate the opportunity to be of service and hope this response has been helpful.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

cc: The Honorable Dean Heller
United States Senate
Washington, D.C. 20510

United States Senate

WASHINGTON, DC 20510

October 29, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
Washington, DC 20460

Dear Administrator McCarthy,

We are contacting you regarding the Environmental Protection Agency's (EPA) July 31, 2014 request for information (RFI) seeking comment on revisions to the agency's Risk Management Program (RMP). The RFI was identified as an action item in the May 2014 report to the President entitled, "Executive Order 13650 Actions to Improve Chemical Faciltiy Safety and Seucrity – A Shared Commitment" (EO Report). Both the RFI and the EO Report contemplate expansion of the RMP to include ammonium nitrate (AN). Specifically, we believe that it would be inappropriate and redundant to include AN in EPA's RMP program given that regulation of AN is already fully covered by Occupational Safety & Health Administration (OSHA) requirements set out at 29 CFR 1910.109(i). We believe that regulating AN through the RMP would impose a significant economic burden on the commercial explosives industry and the agricultural community and would provide little or no additional safety benefit to workers or the public. Instead, we believe any agency rulemaking to ensure the safety of AN should focus on the existing1910.109(i) standard. With some modification, this standard could be a model for clarity and effectiveness in ensuring the safe storage of AN.

As noted, we do not believe the RMP program is the best avenue for addressing safe AN storage, which is a straightforward exercise that is easily achieved through adherence to uncomplicated storage practices such as those included in 1910.109(i). The performance standards, such as those characterizing the RMP, are well-suited to chemical processes where sudden upsets, malfunctions, unplanned shutdowns, and changes in process conditions (e.g., pressure, temperature), could result in an accidental release. This is not the case with AN, which is stable and non-reactive unless subjected to extreme external stimuli such as fire or shock. The key to ensuring that AN is safely stored is preventing these occurrences.

Unlike flammable chemicals, which the RMP specifically addresses, AN does not, in itself, pose a fire hazard. While AN must be protected from fire because of its oxidizing properties, it does not burn and it does not initiate fire. There is no need to perform an elaborate RMP process hazard analysis (PHA) in order to ensure that AN is properly stored and that the storage facility has adequate fire prevention measures in place. All responsible industries practice effective fire prevention outside of the RMP. Moreover, fire prevention requirements for AN storage areas are expressly laid out in 1910.109(i). Additionally, OSHA is forming an Alliance with other government agencies and the fertilizer industry. Through the Alliance Program, OSHA works with groups committed to worker safety and health to prevent workplace fatalities, injuries, and illness. We expect fire prevention to be a major focus of this initiative.

The concern regarding exposure of AN to shock is primarily associated with its use in the manufacture of explosives. As you are aware, more than 75 percent of the AN used in the U.S. is consumed by the commercial explosives industry. Because of the widespread use of AN in manufacturing explosives,

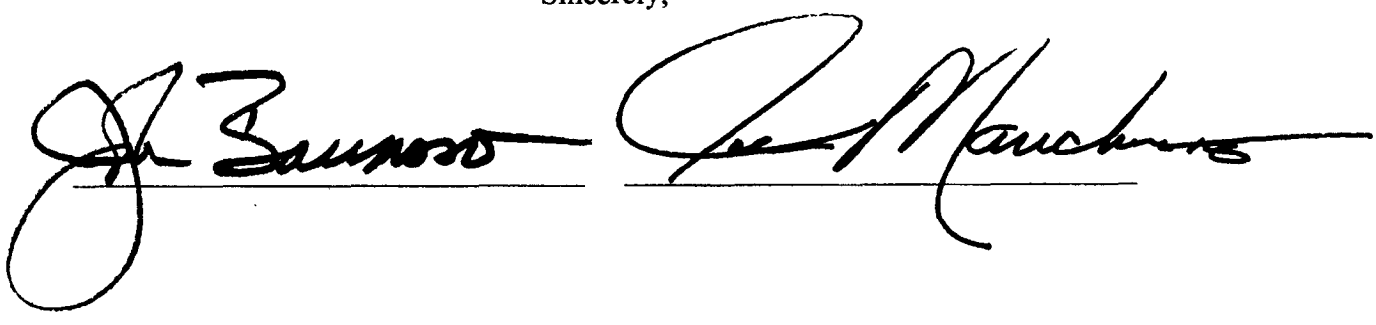
the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has promulgated rules to prevent exposure of AN to explosives when stored at the same location. ATF regulations prescribe exact separation distances between AN stores and co-located explosives. The rules also ensure that facilities where both of these materials are stored are adequately distanced from offsite locations accessed by the public. This carefully enforced and time-tested regulatory scheme ensures that AN stores are insulated from accidental shock and that, in the unlikely event of an accident, any impacts will be confined to the storage site. Additional regulation under the RMP would add nothing to the current protections.

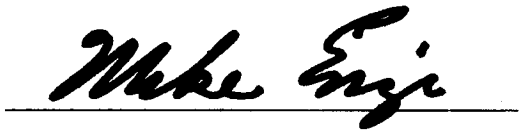
As you know, EPA encourages local responders to use the RMP to prepare emergency response plans. In the case of a fire at a facility handling AN, the appropriate plan and response is to evacuate according to industry guidelines. Outside emergency responders should never attempt to fight a fire involving AN. Industry guidelines have recommended a retreat distance of 1 mile, consistent with the current standard being considered, with some exceptions based on quantity and storage conditions, by the National Fire Protection Association for inclusion in its safety standard for AN. First responder organizations should be made aware of the existence of AN storage facilities in their jurisdictions though implementation of the Emergency Planning and Community Right-To-Know Act (EPCRA) and should be made aware of the appropriate evacuation response. The EO Report acknowledges the importance of improving local/state/federal communication regarding chemical hazards and responses. Ensuring that local responders understand the correct response to incidents involving AN would be a good place to start. EPCRA is ideally suited to accomplishing this goal. Resorting to the RMP would not only delay the dissemination of the needed information, it would unnecessarily complicate the process for all concerned.

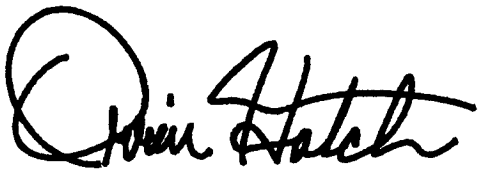
Lastly, the RMP is a program specifically designed to measure "hazard," not "risk." We believe AN is more appropriately managed in accordance with principles of risk. The RMP program is intended to assess complex chemical processes with multiple opportunities for failure. The program's requirements for written plans detail, among other things, operating limits, emergency shutdown procedures, mechanical integrity, maintenance, and training are wholly appropriate for such operations. As noted above, the storage of AN, however, presents no similar opportunities for catastrophic failure due to processing changes or upsets, mechanical breakdowns, or runaway chemical reactions. The safe management of AN is simple -- it must be protected from fire and strong shock waves. Any potential fire or shock hazards existing in an AN storage area are easily identified without resorting to a complex program like the RMP.

The best thing for public safety is to apply existing regulations updated consistent with industry best practices to AN that have been effective and that will work to protect workers and the public. The commercial explosives industry, and the mining industry which is dependent on explosives manufactured from AN, as well as the agricultural community would be hugely impacted should agencies get this policy wrong. Again, we urge you not to not regulate AN under the EPA's RMP.

Sincerely,







DEAN HELLER
NEVADA
(202) 224-6244

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
ENERGY AND NATURAL RESOURCES
COMMERCE, SCIENCE, AND TRANSPORTATION
BANKING, HOUSING, AND URBAN AFFAIRS
SPECIAL COMMITTEE ON AGING
VETERANS' AFFAIRS

June 22, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 1101A
Washington, DC 20460

Dear Gina McCarthy:

It is my pleasure to inform you that the 2015 Annual Lake Tahoe Summit will take place on Monday, August 24th at Round Hill Pines in South Lake Tahoe, Nevada. As Honorary Host of this year's Summit, I invite you to join me at this important event from 10:00 a.m. to 12:00 noon.

Anyone who has been to Lake Tahoe understands the importance of the Lake's long-term environmental and economic health for future generations. To facilitate some of these important goals, the 2015 Summit will focus on issues related to transportation, infrastructure, revitalizing communities, and making the region more sustainable. Your attendance is an important contribution as we build upon past successes and pave the way for the future.

If you have any questions, please feel free to contact Ashley Carrigan at 775-686-5770 or you may RSVP to tahoesummit@heller.senate.gov. Thank you for your consideration and I hope to see you in beautiful Lake Tahoe this August.

Sincerely,

DEAN HELLER
United States Senator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 13 2016

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

The Honorable Dean Heller
United States Senate
Washington, D.C. 20510

Dear Senator Heller:

The U.S. Environmental Protection Agency's (EPA) Superfund program is proposing to add the Anaconda Copper Mine site, located in Yerington, Nevada, to the National Priorities List (NPL) by rulemaking. The EPA received a governor/state concurrence letter supporting the listing of this site on the NPL. Listing on the NPL provides access to federal cleanup funding for the nation's highest priority contaminated sites.

Because the site is located within your state, I am providing information to help in answering questions you may receive from your constituency. The information includes a brief description of the site and a general description of the NPL listing process.

If you have any questions, please contact me or your staff may contact Raquel Snyder, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-9586. We expect the rule to be published in the Federal Register in the next several days.

Sincerely,

Mathy Stanislaus

Mathy Stanislaus
Assistant Administrator

Enclosures

EPA United States Environmental Protection Agency

OLEM/OSRTI
Washington, DC 20460

NATIONAL PRIORITIES LIST (NPL)

****Proposed Site****

September 2016

ANACONDA COPPER MINE | Yerington, Nevada
Lyon County

Site Location:

The Anaconda Copper Mine site is an abandoned 3,500 acre mine and mineral extraction facility located approximately one mile west of the city of Yerington, Nevada.

Site History:

The mine began operation in 1918 and in 1951, Anaconda Copper Company purchased it, and mined and milled copper ore there until 1978. Atlantic Richfield Company (ARC) purchased Anaconda and its assets, including the Yerington mine. In 1988, Arimetco bought the private mine property and operated a heap leach facility to extract copper. Arimetco filed for bankruptcy in 1998 and abandoned its heap-leach operation in January 2000.

Site Contamination/Contaminants:

The site includes: a 6,400 foot long, 2,800 foot wide and 800 foot deep open-pit mine; 400 acres of waste rock; five leach pads covering 250 acres; 3,000 acres of contaminated tailings; and 1,377 acres of disposal ponds. The waste contains heavy metals and radionuclides well above background levels. Drinking water from wells near the site contains arsenic and uranium concentrations above the EPA's Safe Drinking Water Act Maximum Contaminant Levels (MCLs).

Potential Impacts on Surrounding Community/Environment:

There are more than 200 active wells near the site that serve as the sole source of drinking water for approximately 5,000 people. Since 2004, ARC has provided bottled water to tribal members and more than 80 other residences affected by uranium in the drinking water. Dust from on-site tailings and evaporation ponds blows off-site during periods of moderate to high wind conditions. Community residents have complained about possible airborne contaminants. The evaporation ponds and heap leach ponds pose a physical threat to wildlife, including migratory birds and land animals, who are known to frequent the site.

Response Activities (to date):

In 2000, the state of Nevada removed at least 250 drums of waste and more than 70 tanker trucks of acidic extraction fluid. In 2006, the EPA removed polychlorinated biphenyl (PCB) contaminated equipment and capped 167 acres of contaminated dust sources. In 2007, the EPA repaired two and closed one of the evaporation ponds, and constructed a new, four-acre evaporation pond to allow more diversion of fluids out of leaking ponds. The state constructed additional containment ponds (funded by the EPA and ARC) in 2013 that were designed to contain a 25 year rainfall event.

Need for NPL Listing:

The state of Nevada referred the site to the EPA. Other cleanup options were evaluated, but are not viable at this time. NPL listing is necessary because the site needs comprehensive cleanup to close the former Arimetco heap leach pads and ponds, address contaminated ground water which has traveled off-site and close the former Anaconda process areas. The EPA received letters in support of proposing to add this site to the NPL from the state, Yerington Paiute Tribe, Walter River Paiute Tribe and the Yerington Community Action Group.

[The description of the site (release) is based on information available at the time the site was evaluated with the HRS. The description may change as additional information is gathered on the sources and extent of contamination. See 56 FR 5600, February 11, 1991, or subsequent FR notices.]

For more information about the hazardous substances identified in this narrative summary, including general information regarding the effects of exposure to these substances on human health, please see the Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs. ATSDR ToxFAQs can be found on the Internet at http://www.atsdr.cdc.gov/toxfaqs/index.asp or by telephone at 1-800-CDC-INFO or 1-800-232-4636.

EPA United States Environmental Protection Agency

OLEM/OSRTI
Site Assessment and Remedy Decisions Branch
Washington, DC 20460

NATIONAL PRIORITIES LIST (NPL)

WHAT IS THE NPL?

The National Priorities List (NPL) is a list of national priorities among the known or threatened releases of hazardous substances throughout the United States. The list serves as an information and management tool for the Superfund cleanup process as required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances.

There are three ways a site is eligible for the NPL:

1. **Scores at least 28.50:**
   A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA published as Appendix A of the National Contingency Plan. The HRS is a mathematical formula that serves as a screening device to evaluate a site's relative threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for inclusion on the NPL. This is the most common way a site becomes eligible for the NPL.

2. **State Pick:**
   Each state and territory may designate one top-priority site regardless of score.

3. **ATSDR Health Advisory:**
   Certain other sites may be listed regardless of their HRS score, if all of the following conditions are met:

   a. The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory that recommends removing people from the site;
   b. EPA determines that the release poses a significant threat to public health; and
   c. EPA anticipates it will be more cost-effective to use its remedial authority than to use its emergency removal authority to respond to the site.

Sites are first proposed to the NPL in the *Federal Register*. EPA then accepts public comments for 60 days about listing the sites, responds to the comments, and places those sites on the NPL that continue to meet the requirements for listing. To submit comments, visit www.regulations.gov.

Placing a site on the NPL does not assign liability to any party or to the owner of any specific property; nor does it mean that any remedial or removal action will necessarily be taken.

For more information, please visit www.epa.gov/superfund/sites/npl/.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MAR 20 2015

The Honorable Evan H. Jenkins
Member, U.S. House of Representatives
Huntington District Office
845 Fifth Avenue
Huntington, West Virginia 25701

Dear Representative Jenkins:

Thank you for your February 18, 2015 letter on behalf of your constituent, Mr. Francis A. Zuspan, regarding an allegation of illegal hazardous waste dumping near Clifton, West Virginia. Mr. Zuspan has asked why the United States did not pursue enforcement in this matter.

The U.S. Environmental Protection Agency (EPA), in consultation with the West Virginia Department of Environmental Protection, did perform an investigation of the allegations. The investigators found insufficient evidence to support an enforcement response.

If you have any questions, please do not hesitate to contact me or have your staff contact Mr. Mark Ferrell, EPA's West Virginia Liaison, at (304) 542-0231.

Sincerely,

Shawn M. Garvin
Regional Administrator

EVAN H. JENKINS
3RD DISTRICT, WEST VIRGINIA

COMMITTEE ON APPROPRIATIONS

evanjenkins.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–4803

502 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225–3452

845 5TH AVENUE
SUITE 152
HUNTINGTON, WV 25701
(304) 522–2201

February 18, 2015

Ms. Laura Vaught
Associate Administrator for Congressional & Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Vaught:

I have been contacted by (b) (6) [redacted], regarding their efforts for assistance with the enclosed issue.

Since this matter is under your jurisdiction, I am referring it to you for your consideration.

Once you have reviewed the enclosed information, please respond to my Huntington District Office Office at 845 Fifth Avenue, Huntington, WV 25701.

Sincerely,

Evan H. Jenkins

Evan H. Jenkins
Member of Congress

EHJ/tb
Enclosures

(b) (6)
[redacted]

January 22, 2015

US Representative Evan Jenkins
3rd District WV
502 Cannon House Office Building
Washington, DC 20515

InRe: EPA case #8EHQ-13-19252

Mr. Jenkins,

This case involves over 1000 tons of HAZARDOUS WASTE illegally dumped & buried near Clifton, WV, at least 6 eyewitnesses have stated to witnessing this event.

It has come to my attention that Booth Goodwin, US Attorney in Huntington WV, chooses not to prosecute or pursue those responsible.

I am asking you to check on this and explain why President Obama & Booth Goodwin chooses to ignore this & place the lives of nearby residents at risk?

Thank You

(b) (6)
[redacted]

Phone 304/773-5150 cell 304/593-0040
email: zuspan@earthlink.net

mL49827

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

DEC. 19, 2013

Office of
Chemical Safety and
Pollution Prevention

(b) (6) [redacted]

Dear Submitter:

EPA acknowledges information submitted by your organization under Section 8(e) of the Toxic Substance Control Act (TSCA) was received on September 09, 2013. The TSCA Section 8(e) Case Number assigned to your submission(s) by EPA may be found below. Please cite the assigned 8(e) Case Number when submitting follow up or supplemental information.

Be aware, all TSCA 8(e) submissions are placed in the public files unless confidentiality is claimed according to the procedures outlined in Part X of EPA's TSCA Section 8(e) policy statement (43 FR 1113, March 16 1978). If your submission contains Confidential Business Information, you will need to provide substantiation for your claims. To substantiate claims, if you have not already done so, submit responses to the questions found in the Confidential Business Information section of the TSCA Section 8(e) programmatic homepage:
http://www.epa.gov/opptintr/tsca8e/pubs/confidentialbusinessinformation.html

Please address any further correspondence with the Agency related to the enclosed TSCA 8(e) submission(s) to:

TSCA Confidential Business Information Center (7407M)
EPA East - Room 6428 Attn: Section 8(e)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

EPA looks forward to continued cooperation with your organization in its ongoing efforts to evaluate and manage potential risks posted by chemicals to health and the environment.

CBI	8(e) Case Number	Chemical ID
N	8EHQ-13-19252	No CAS # coal tar creosote

CONTAINS NO CBI

EVAN H. JENKINS
3RD DISTRICT, WEST VIRGINIA

COMMITTEE ON APPROPRIATIONS

evanjenkins.house.gov

502 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3452

845 5TH AVENUE
SUITE 162
HUNTINGTON, WV 25701
(304) 522-2201

Congress of the United States
House of Representatives
Washington, DC 20515-4803

June 10, 2015

Ms. Laura Vaught, Associate Administrator
Congressional & Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Vaught:

I have been contacted by Mr. James Sowder, Mobil Mechanx, LLC, regarding his efforts for assistance with the enclosed issue.

Since this matter is under your jurisdiction, I am referring it to you for your consideration.

Once you have reviewed the enclosed information, please respond to my Beckley Office at 223 Prince Street, Beckley, WV 25801.

Sincerely,

Evan H. Jenkins
Member of Congress

EHJ/km
Enclosure

cc: FOIA

05/21/2015

Sabrina Burroughs
FOIA Officer
90 K Street, NE
9th Floor
Washington, DC 20229-1181

Dear Ms. Burroughs:

We are requesting all information for Mobile Mechanx LLC. That is the correct spelling. We are a small US manufacturer and are trying to determine what happen to some of our property. Customs took some of property but was unable to supply documentation on why the property was taken. They seemed to indicate it was due to the EPA but both EPA and customs have been unable to supply any supporting documents as to why the property was taken. Please provide any documentation there is for Mobile Mechanx LLC. with your agency. The property that was taken was done so at the Norfolk Port. It is imperative that we have documents so we can address any issues the EPA or Customs may have. We are in a position now we cannot order again without knowing what the problem is. We will be going out of business if we do not get documents soon. Documentation is also imperative for us to be able to get credit from suppliers if they failed to supply the products in our purchase agreement. Please provide any documentation CBP may have for Mobil Mechanx LLC. We are also including a partial list of property taken. There was other property taken as well but this is all the documents we have.

We took extraordinary measures to ensure all these engines were EPA compliant even though we are not an engine dealer. We sent our inspector to China to inspect all engines for EPA compliance before they were loaded. He inspected and tested all engines for EPA stickers, valid EPA certificates of compliance and inspected all engines. As you can see there are 3 different brands listed. We believe there could have been some mistake made at EPA or CBP. The chances of getting 3 different brand engines with proper stickers and certificates of compliance that are not EPA are one in a billion on its own. The fact that one brand is a major USA company in Kohler who does not make non-compliant engines makes this even more suspect. We can get no credit from suppliers without documentation from whatever agency decided to not allow these engines. Our supplier also said that the Chinese customs will not allow them to come back until we get all the documentation. Most importantly we cannot place any additional orders until we get the documentation on why the property was taken. If there really is an issue, we would have to address it before we could order again with suppliers and engine manufactures. Please expedite this request. We are a small business and will be out of business in a matter of weeks if we are unable to place orders.

Our state, here in West Virginia, is economically challenged to start with. I would have hoped our government would be supporting small businesses and not putting them out of business. That is exactly what is going to happen though, if we are unable to find out why our property was taken by the government.

Please send documents to:

Mobil Mechanx LLC
397 Ames Heights Rd
Lansing, WV 25862

AND

mobilmechanx@gmail.com

Thank you,

James Sowder
Member, Mobil Mechanx LLC

Encl: Customs Seizure List

CC: Senator Joe Manchin III, Senator Shelley Capito, and Representative Evan Jenkins

U.S. DEPARTMENT OF HOMELAND SECURITY
Bureau of Customs and Border Protection

4016284

CUSTODY RECEIPT for SEIZED PROPERTY and EVIDENCE

Handbook 5200-09

1. FPF No. 2015210400012101	2. Incident No. 2015S200696350I
3. Investigative Case No.	4. Enforce No.
5. Prior Detention? Yes [X] No [ ] If yes, CBP 6051D No. 724930	6. Date Seized (mm/dd/yyyy) 05/04/2015 | 7. Time Seized (Use 24 Hrs) 1521 | 8. FDIN/Misc.
9. Seized From: Name: MOBIL MECHANIX LLC Address: 397 AMES HEIGHTS RD LANSING, WV 25862 Telephone No. ( ) Ext:	10. Entry No. 500-16023013 | 11. Seal or Other ID Nos. 12. Remarks: B/L# ZIMU400454899 CONT# BCSU8643240 12 PALLETS

13. Send Correspondence to: FINES, PENALTIES, & FORFEITURE OFFICE AT 757-533-4221

14. PROPERTY (By Line Item) Attach CBP 58 if conveyance

a. Line Item No	b. Description	c. Packages Number	c. Packages Type	d. Measurements Qty.	d. Measurements UM	e. Est. Dom. Value
001	KOHLER GASOLINE ENGINE			10	EA	$ 769.95
002	DK DIESEL ENGINE			25	EA	$ 11,377.13
003	DUCAR GASOLINE ENGINE			15	EA	$ 1,356.74
004	DUCAR GASOLINE ENGINE			01	EA	$ 0
						$
						$

15. Seizing Officer
L. THAMES — Print Name
X L. Thames — Signature
5/4/15 — Date

16. ACCEPTANCE / CHAIN OF CUSTODY

a. Line Item No.	b. Description	c. Print Name/Title/Organization	d. Signature	e. Date

CBP Form 6051A Continuation Sheet Attached? Yes [ ] No [ ]

CBP Form 6051S (03/04)

CBP Retains Original

Congressman Evan Jenkins

Kim McMillion, Office Manager
223 Prince Street
Beckley, WV 25801
(304) 250-6177
(304) 250-6179 (fax)

TO: EPA

FAX# 202-501-1519

DATE: 6/10/2015

#of Pages: 5

Message:

United States Senate

WASHINGTON, DC 20510

July 10, 2015

The Honorable Janet McCabe
Acting Assistant Administrator
Office of Air & Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production
Docket No. EPA-HQ-OAR-2010-0895

Dear Assistant Administrator McCabe:

We write to follow up to our prior meetings and contacts during which we discussed the Environmental Protection Agency's rule entitled, "National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production" ("the final rule")(76 FR 72508). EPA finalized the rule on May 28, 2015. We reiterate the importance of cooperative dialogue among the Agency and stakeholders to ensure that the rule is technically and financially feasible for the impacted companies, Eramet Marietta and Felman Production.

EPA committed to develop a reasonable rule that drives environmental improvement in a manner that the companies can comply with sensible investment. You assured us of the Agency's efforts to honor that commitment and that the agency recognizes the significant labor and defense implications of the proposal should technical requirements render continuing operation in the United States infeasible. You also reported that the data and alternatives offered by the companies was helpful to the EPA in developing the final rule.

We appreciate EPA's efforts to take a balanced approach to the final rule, but we are concerned that the two-year compliance period may make it impossible for our constituent companies to make the necessary investments to meet the required standards. Given the extensive process undertaken by both EPA and the companies to achieve a balanced rule, it would be extremely disappointing if the companies are forced to stop operating because they lacked the time and/or resources to implement new emissions controls within the timeframe in the final rule.

We believe that the final rule should be considered a major regulation under the Congressional Review Act because of its impact on "the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets." *See* 5 U.S.C. 802(2)(C). Such a designation would have the incidental benefit of a longer effective compliance period. More importantly, even if the final rule is not designated as a major regulation, we would ask that you give full consideration to providing a longer compliance period through a consent decree or other procedural mechanism. This would make sure that the hard work invested by the companies and

the EPA will result in both continued operations at the two companies and the emission reductions sought by the final rule.

We want to ensure that the months of valuable, cooperative communication among the EPA, Eramet Marietta and Felman Production were not misspent. We reemphasize the importance of an inclusive dialogue to produce a rule that benefits all Americans without sacrificing the important contribution these companies make to communities in our states and to our constituents.

Sincerely,

Shelley Moore Capito
United States Senator

Joe Manchin III
United States Senator

Rob Portman
United States Senator

Sherrod Brown
United States Senator

David B. McKinley, P.E.
Member of Congress

Bill Johnson
Member of Congress

Evan H. Jenkins
Member of Congress

Alex X. Mooney
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 03 2015

OFFICE OF
AIR AND RADIATION

The Honorable Evan H. Jenkins
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Jenkins:

Thank you for your letter of July 10, 2015, regarding the National Emission Standards for Hazardous Air Pollutants: Ferroalloys Production final rule that was signed by the U.S. Environmental Protection Agency Administrator Gina McCarthy on May 28, 2015 and published in the Federal Register on June 30, 2015.

I appreciate the detailed points raised in your letter. We understand that the two ferroalloys production facilities, Eramet Marietta and Felman Production, will need a considerable amount of time to install controls to comply with the standards. Therefore, in the final rule we provided the maximum time of two years allowed under section 112(f) of the Clean Air Act for the facilities to comply with the rule. However, we are aware one or both facilities might need more than two years to achieve full compliance. Therefore, we are discussing this issue with other EPA Offices, including the Office of General Counsel and Office of Enforcement and Compliance Assurance, to explore options to provide a longer compliance period.

Additionally, in your letter, you suggest that the final rule should be considered a major regulation under the Congressional Review Act (CRA). According to the CRA, the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget determines major rule status based on finding a rule results in or is likely to result in certain statutory criteria being met [5 USC 804(2)], including if the rule would have significant adverse impacts on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. After extensive work with both affected entities, we believe the current rule will not result in significant adverse effects on the ability of Eramet Marietta and Felman Production to compete with foreign-based enterprises in the domestic and export markets.

We greatly appreciate all the input we have received during the rulemaking process from the public, the states, industry stakeholders, environmental groups, elected officials and many others on the various issues. We considered all the input we received in developing the final rule.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202)-564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

Congress of the United States
Washington, DC 20515

July 28, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C., 20460

Dear Administrator McCarthy,

We are concerned that the Environmental Protection Agency (EPA) has proposed new ozone National Ambient Air Quality Standards (NAAQS) before completing implementation of the existing ozone standards. Between 1980 and 2013, U.S. Gross Domestic Product, population, and energy consumption grew substantially, while air emissions dropped significantly. Moving forward, EPA projects air quality will continue to substantially improve over the next ten years through various federal controls including state and industry efforts to implement the current 2008 ozone standard. EPA can support economic growth while continuing the decades-long trend towards cleaner air by maintaining the existing 75 ppb ozone standard and allowing time for our constituents to fully implement current clean air requirements.

EPA data indicates that the air is cleaner today than it has been in thirty years, progress due in large part to control measures associated with past NAAQS standards. This success shows that ozone NAAQS when given an opportunity to be fully implemented produce significant reductions. Companies seeking to build or expand facilities invest significantly in control processes. If a proposed standard cannot be met, nonattainment areas would be required to implement costly ozone-reduction measures and permitting requirements that could prove technologically difficult. Moreover, EPA acknowledges that there are alternative views on health effects evidence and risk information. Due to all these uncertainties, allowing the current standard to take full effect would alleviate any perceived concerns with measured scientific data and allow EPA time to further consider those uncertainties while still protecting air quality.

EPA's ozone rules affect all aspects of our communities and municipalities, including consumers and vital industries. EPA openly acknowledges that to meet national air quality standards a partnership is required between the federal government, states, localities and industry. Yet, the timing of EPA's proposal could strain state and local government resources. EPA delayed implementing the current 2008 standard for two years while it decided whether to reconsider that standard. EPA is just now providing states with guidance to implement the 2008 standard, and the state-federal clean air partnership should be allowed an opportunity to work.

Indeed, states are currently investing substantial administrative resources to make up lost time. It could prove burdensome to force states to implement a new ozone standard at the same time they are only starting to implement the current one. We believe allowing sufficient time for existing measures to take hold, before setting a new ozone standard, would yield the desired results EPA is currently seeking.

While we recognize that EPA is under court order to complete its review of the ozone NAAQS, EPA has requested comment on maintaining the existing standard. We believe the full implementation of a standard of 75 ppb is in line with EPA goals and the ideals set forth under the Clean Air Act and, could possibly, by the next five year review, achieve lower emissions standards than originally sought. It is clear from the past that ozone standards can only achieve the desired results if they are allowed time to be fully implemented. EPA should keep in mind the newly laid out requirements in the delayed 2008 ozone NAAQS when considering whether to finalize a new, potentially stricter, standard. Therefore, we request EPA allow time for the benefits of the current ozone standard to become effective by retaining the current ozone standard.

Sincerely,

Robert E. Latta
Member of Congress

Gene Green
Member of Congress

Mike Kelly
Member of Congress

Pete Olson
Member of Congress

Ann Kirkpatrick
Member of Congress

Kevin Cramer
Member of Congress

Jim Bridenstine
Member of Congress

Kyrsten Sinema
Member of Congress

Reid Ribble
Member of Congress

Morgan Griffith
Member of Congress

Bill Johnson
Member of Congress

Glenn Grothman
Member of Congress

Frank Lucas
Member of Congress

Rodney Davis
Member of Congress

Garrett Graves
Member of Congress

Ruben Hinojosa
Member of Congress

Richard Hudson
Member of Congress

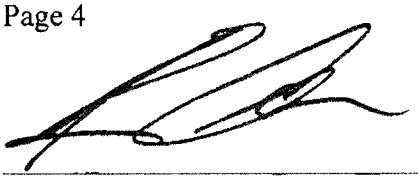
Dan Newhouse
Member of Congress

David McKinley
Member of Congress

Steve Chabot
Member of Congress

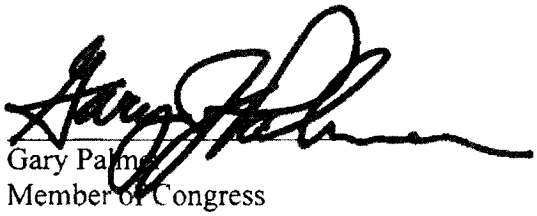
Henry Cuellar
Member of Congress

Jim Renacci
Member of Congress

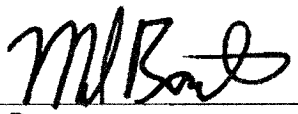


Ralph Abraham
Member of Congress

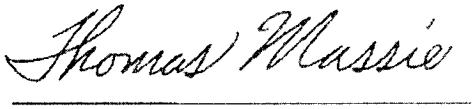
Steve Knight
Member of Congress



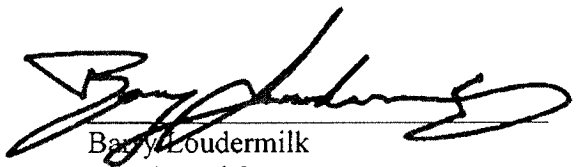
Gary Palmer
Member of Congress



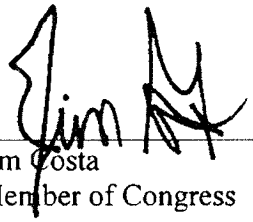
Mike Bost
Member of Congress



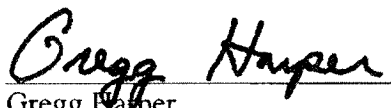
Thomas Massie
Member of Congress



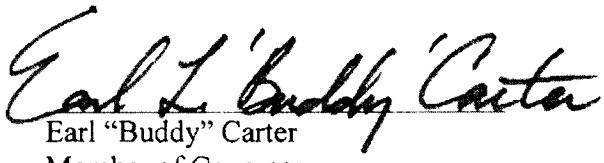
Barry Loudermilk
Member of Congress



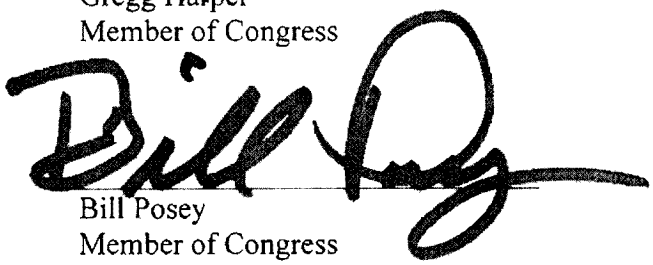
Jim Costa
Member of Congress



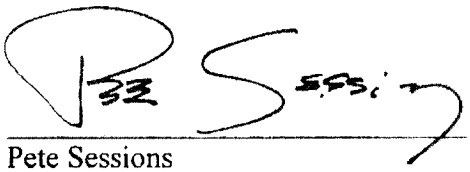
Gregg Harper
Member of Congress



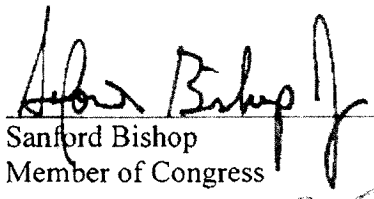
Earl "Buddy" Carter
Member of Congress



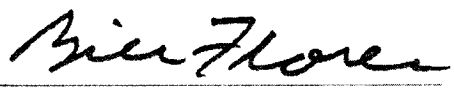
Bill Posey
Member of Congress



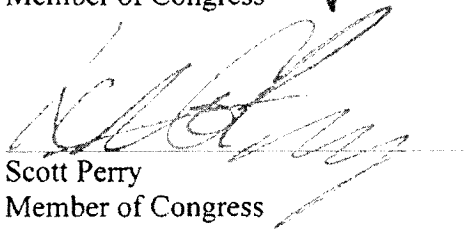
Pete Sessions
Member of Congress



Sanford Bishop
Member of Congress



Bill Flores
Member of Congress



Scott Perry
Member of Congress

Adam Kinzinger
Member of Congress

John Fleming, MD
Member of Congress

Duncan Hunter
Member of Congress

Brian Babin
Member of Congress

David Joyce
Member of Congress

Randy Hultgren
Member of Congress

Bob Gibbs
Member of Congress

Andy Barr
Member of Congress

Scott Tipton
Member of Congress

Al Green
Member of Congress

John Moolenaar
Member of Congress

Lynn Jenkins
Member of Congress

Lamar Smith
Member of Congress

Stephen Fincher
Member of Congress

Ann Wagner
Member of Congress

Steve Scalise
Member of Congress

Billy Long
Member of Congress

F. James Sensenbrenner, Jr.
Member of Congress

Brad Ashford
Member of Congress

Randy Weber
Member of Congress

Ken Buck
Member of Congress

Brett Guthrie
Member of Congress

Susan Brooks
Member of Congress

Mike Pompeo
Member of Congress

Evan Jenkins
Member of Congress

Rick Crawford
Member of Congress

Renee Ellmers
Member of Congress

Tim Ryan
Member of Congress

Austin Scott
Member of Congress

Hal Rogers
Member of Congress

Leonard Lance
Member of Congress

Walter B. Jones
Member of Congress

Randy Neugebauer
Member of Congress

Luke Messer
Member of Congress

Mo Brooks
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Adrian Smith
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Steve Stivers
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Ed Whitfield
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Collin Peterson
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Mike D. Rogers
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Jeb Hensarling
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Patrick Tiberi
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Markwayne Mullin
Member of Congress

Rob Woodall
Member of Congress

Alex Mooney
Member of Congress

Fred Upton
Member of Congress

Joe Barton
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Brad Wenstrup
Member of Congress

Chuck Fleischmann
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David Schweikert
Member of Congress

Larry Bucshon
Member of Congress

Cedric Richmond
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Michael McCaul
Member of Congress

Bruce Westerman
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Kay Granger
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K. Michael Conaway
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Rosa DeLauro
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Doug Collins
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John Shimkus
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Tom Marino
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Diane Black
Member of Congress

David Rouzer
Member of Congress

Gus M. Bilirakis
Member of Congress

Keith Rothfus
Member of Congress

Terri Sewell
Member of Congress

Ted S. Yoho, D.V.M.
Member of Congress

Chris Collins
Member of Congress

Sam Johnson
Member of Congress

Michael Doyle
Member of Congress

Sean P. Duffy
Member of Congress

John Culberson
Member of Congress

Jackie Walorski
Member of Congress

Filemon Vela
Member of Congress

Michael Simpson
Member of Congress

Todd Young
Member of Congress

Andy Harris
Member of Congress

Jason Smith
Member of Congress

Randy Forbes
Member of Congress

Doug Lamborn
Member of Congress

Steve King
Member of Congress

Phil Roe, M.D.
Member of Congress

Vicky Hartzler
Member of Congress

Marsha Blackburn
Member of Congress

Ryan Zinke
Member of Congress

Will Hurd
Member of Congress

Patrick McHenry
Member of Congress

Kevin Brady
Member of Congress

Charles W. Dent
Member of Congress

Lou Barletta
Member of Congress

Bill Huizenga
Member of Congress

Blane Luetkemeyer
Member of Congress

Tim Huelskamp
Member of Congress

Rick Allen
Member of Congress

Steve Pearce
Member of Congress

Joseph R. Pitts
Member of Congress

Tim Murphy
Member of Congress

Jeff Duncan
Member of Congress

Dan Benishek, M.D.
Member of Congress

Bradley Byrne
Member of Congress

Rod Blum
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 2 2 2015

OFFICE OF
AIR AND RADIATION

The Honorable Lynn Jenkins
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Jenkins:

Thank you for your letter of July 28, 2015, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the Ozone National Ambient Air Quality Standards (NAAQS) proposed rule. The Administrator asked that I respond on her behalf.

As you know, the EPA sets NAAQS to protect public health and the environment from six common pollutants, including ground-level ozone. The Clean Air Act requires the EPA to review these standards every five years to ensure that they are sufficiently protective. On November 25, 2014, the EPA proposed to strengthen the NAAQS for ground-level ozone, based on extensive scientific evidence about ozone's effects.

As you note we have made great progress in improving air quality and public health in the United States, and it has not come at the expense of our economy. Indeed, over the past 40 years, air pollution has decreased by nearly 70 percent while the economy has tripled. The recently adopted clean air regulations you mention will certainly improve ozone levels across the country, and as a result, we expect more areas to have improved air quality in the future.

I appreciate your comments on the ozone proposal and have asked my staff to place your letter in the docket for the rulemaking.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at lewis.josh@epa.gov or (202) 564-2095.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

EVAN H. JENKINS
3RD DISTRICT, WEST VIRGINIA

COMMITTEE ON APPROPRIATIONS

evanjenkins.house.gov

502 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3452

845 5TH AVENUE
SUITE 152
HUNTINGTON, WV 25701
(304) 522-2201

Congress of the United States
House of Representatives
Washington, DC 20515–4803

August 4, 2015

Ms. Laura Vaught
Associate Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3426 ARN
Washington, DC 20460

Dear Ms. Vaught:

I have again been contacted by Mayor Reba Honaker, City of Welch, (304) 436-3113, regarding her efforts for assistance with the enclosed issue.

Since this matter is under your jurisdiction, I am referring it to you for your consideration.

Once you have reviewed the enclosed information, please respond to my Beckley Office at 223 Prince Street, Beckley, WV 25801.

Sincerely,

Evan H. Jenkins
Member of Congress

EHJ/km
Enclosure

City of Welch

Welch Municipal Building ● 88 Howard St. ● Welch, WV 24801 ● (304) 436-3115 ● Fax (304) 436-2546

JUL 16 2015

July 13, 2015

File: 7149.21

Mr. Phillip Yeany
Assistant Regional Council
Environmental Protection Agency
1625 Arch Street
Philadelphia, PA 19103

Dear Mr. Yeany,

Re: United States vs. City of Welch, CSO Report
First Semi-Annual Report 2015

Contract 8B is still open for improvements at the Waste Water Treatment Plant.

We have smoke tested for Contract 8B, 8C, and 8D areas in August and September 2014 to verify which customers still have improper connections to the new sanitary sewer. Once these have been identified we will notify the customers by letter of the requirement to remove their illegal connection where technically and economically feasible in the future.

In June – September 2015 we will analyze the impact of the improper connection removal in Contract 8B, 8C, and 8D. Initial review indicates our peak flows have been reduced. We anticipate notifying customers to remove sources of extraneous flows where feasible in 2015 – 2016.

The Sanitary Board has evaluated various bar screen manufacturers and their efficiency of removals. We authorized preparation of bidding documents and advertising of the screen for procurement and our installation. This was approved by WVDEP in September of 2014. This work was completed in May 2015 and appears to be working satisfactorily.

The grit removal unit is currently fully functional. We anticipate the amount of grit received will be significantly reduced as a result of the separation on Contract No. 8B, 8C and 8D. We will continue to

analyze the volume of grit removed and make a determination in July 2015 of other actions which need to be taken. The city has authorized the installation of an automatic pulley device in the grit removal unit.

We have just found a damaged top section of a manhole in Elkhorn Creek which contributed inflow into the system. Temporary repairs have been made. We plan to modify this in the fall.

The City believes the Semi-Annual Reports satisfied the terms and conditions of the Consent Decree.

Attached is the CSO Inspection Report which summarizes the discharges from the active CSO's in the City system for the last six months and CSO Summary Report.

The City of Welch has been making enormous efforts to improve water quality and will continue to do so.

We can schedule a conference call at your convenience.

Please accept this as the First Semi-Annual Report of 2015.

Sincerely,

Reba J. Honaker

Reba J. Honaker, Mayor

City of Welch

Enclosures

CC:

Governor Earl Ray Tomblin
Bobby Lewis, RUS-USDA
Sherry Adams, US Corps if Engineer
James Bush, ARC
Kathy Emory, PE, WVDEP
Elbert Morton, PE, WVIJDC
Robert Fentress, DOJ
Steve Maslowski, EPA
Donald Lewis, WVDEP
Edward L. Shutt, PE, Stafford Consultants, Inc.
Senator Joe Manchin
Senator Shelly Moore Capito
✓Congressman Evan Jenkins
Chris Jarrett, WDA
Jim Ellars, PE, WVIJDC
Kelly Workman, WVDO

cc. w/o encl:

Janna Lowery, USDA
Michele Price-Fay, USEPA
Chuck Fogg, EPA
Jeremy Bandy, WVDEP
John Frederick, WVDEP
Joe Hickman, WVDEP
Mike Zeto, WVDEPO
Walt Ivey, PE, WVBPH
Paul Mattox, PE, WVDOT
West Virginia Public Service Commission
Ashby Lynch, Sanitary Board
Claude Banner, Sanitary Board
Mike Day, City Council
Fred Odum, City Council
William Spencer, City Council
Steve Ford, City Council
Vicki McBride, City Council
Jason Roberts, Region 1 Planning and Development Council
Matthew Peters, Stafford Consultants, Inc.
Richard Osborne, Stafford Consultants, Inc.
Tim Carver, WWTP Supervisor
Jack Whittaker, Supervisor

City of Welch

2015 Semi-Annual Report
1ST Half

Waste Water Treatment Plant

CSO Visual Inspection Report Flow Discharge

CSO #	SIZE	STATUS	Visual							LOCATION DESCRIPTION	PLANNED FOR REMOVAL
			2009	2010	2011	2012	2013	2014	2015		
2	24	Functional			23	5	10	**11	*33	Main Lift Station	Under Evaluation
3	8	Capped	0	0	0	0	0	0	0	Bottom of Hemp Hill	Removed November 2006
4	15	Capped	0	0	0	0	0	0	0	Behind Pendry's Body Shop	Removed March 2009
5	24	Functional	5	8	13	5	2	12	*3	At Flood Wall	Under Evaluation
6	18	Capped	0	0	0	0	0	0	0	Behind Flat Iron Pharmacy	Removed March 2008
7	12	Functional	8	8	4	1	0	*11	*0	Behind 83 Summers St	Under Evaluation
8	12	Capped	14	14	12	8	1	*6	0	Behind 149 Summers St	Removed April 16 2014
9	12	Capped	8	13	7	4	0	*4	0	Clubhouse Summers St	Removed April 16 2014
10	12	Capped	16	13	11	0	0	0	0	97 Lake Drive	Removed January 2012
11	8	Capped	0	0	0	0	0	0	0	Across from VET. Memorial	Removed November 2006
12	12	Capped	0	0	0	0	0	0	0	Behind SHIELDS AUTO	Removed November2006
13	10	Capped	1	2	1	1	0	0	0	Hoppy Horne's	Removed December 2013
14	18	Capped	13	15	9	8	3	*8	0	Entrance to SOUTHWOOD	Removed April 2014
15	18	Capped	8	10	6	6	0	*9	0	1033 Riverside Drive	Removed April 2014
16	24	Capped	0	0	0	0	0	0	0	Bridge McDowell & Stewart	Removed November 2006
17	15	Capped	0	0	0	0	0	0	0	Behind Armory Stewart St.	Removed March 2008
18	15	Capped	0	0	0	0	0	0	0	Entrance To Edmore	Removed November 2006
20	15	Capped	45	0	0	0	0	0	0	Under Bridge Downtown	Removed January 2010
21	15	Capped	0	0	0	0	0	0	0	At Mikes Powerhouse Gym	Removed April 2009
23	12	Capped	13	7	0	0	0	0	0	Near State Farm Ins.	Removed July 2010
24	15	Capped	8	9	4	0	0	0	0	PHEONIX CENTER	Removed May 2 2012
25	18	Capped	0	0	0	0	0	0	0	Court Street Bridge	Removed July 2008
26	12	Capped	4	2	0	0	0	0	0	Across From AEP Co.	Removed April 2010
27	12	Capped	5	1	0	0	0	0	0	Behind Old Wolf Tire	Removed May 2010
28	18	Capped	0	0	0	0	0	0	0	Below Jim's Engine	Removed November 2006
29	15	Capped	0	0	0	0	0	0	0	Below Save A Lot	Removed November 2006

**Note: Flow meter reading inaccurate for this period it has been replaced and being calibrated. * Note: flow meter reading is total for 1ST Half.

TOTAL RAINFALL: CSO # 2 56,957,530 **NOTE

SHOP: CSO # 5 384,563

WWTP: 23.49 CSO # 7 7,084,

* NOTE: Flow Meter

Jack Whittaker -- Superintendent

Jack Whittaker

Timothy D. Carver Chief WWTP OPERATOR

Timothy D Carver

CSO Summary Report

CSO Community: City of Welch Sanitary Board
Reporting Period: January 1, 2015 – June 30, 2015
Prepared By: Paul Turpin, Collection System Foreman
Date Submitted: July 9, 2015

Comments on Nine Minimum Controls activity during the past reporting period

1) **O&M Plan** – The Welch Sanitary Board is continuing the implementation of an O & M plan as per letter received from Donald Lewis W.V. DEP Division of Water and Waste Management dated December 19, 2005. The O&M plan is currently being modified by Stafford consultants.
2) **Maximize storage in collection system** – The City of Welch has purchased a new sewer camera and is inspecting the major collection lines to determine the excess storage capacity of the system.
3) **Review and modification of pretreatment requirements** – The Wastewater Treatment Plant has reached an agreement with the contractors who haul the non-domestic waste to our system. They will be notified by phone and fax stating, "The City of Welch is not receiving non-domestic waste during this rain event".
4) **Maximization of flow to POTW for treatment** – The pumps at the main lift station where reset to run at their max rpm when a rain event occurs.
5) **Elimination of CSO dry weather events** – We have had no dry weather openings since monitoring began in 2001.
6) **Control of solids and floatable materials** – The City of Welch has no devices at this time to control solids and floatable materials. Designs for systems to eliminate or control these items are being investigated in conjunction with Stafford Consultants, Inc.
7) **Pollution prevention** – We inspect each of our grease traps on a monthly basis to ensure that the customers are regularly disposing of the grease. We are looking at informing the public to how they can help control the pollution prevention process.
8) **Public notification** – A newspaper ad is printed annually informing the public of the dangers and hazards of the CSO's. There is also information in City Hall available to the public. A public meeting was held 10-21-09 to address any CSO complaints and offer the public more information on the CSO's.
9) **Monitoring to characterize CSO impacts** – We have taken no samples to date after a discharge.

Wet Weather Events

10) **Number of CSO wet weather events that occurred during the last reporting Period** –The City of Welch recorded a total of (34) wet weather events during the report period.
11) **Estimated duration of CSO discharge (gallons or time) 57,349,177 gallons**
12) **Number of CSO wet weather events YTD - 36**

CSO Summary Report

Dry Weather Events

13) Number of CSO dry weather events occurred during the last reporting period – none

14) Date(s) of dry weather event(s) – N/A

15) Cause(s) of the discharge(s) – N/A

16) Summarize actions taken to flush, recover or treat residual material – N/A

17) Corrective action taken to prevent recurrence – N/A

18) Number of CSO dry weather events occurred YTD - none

19) How are CSO outfall discharges determined during the weekends? All CSO's Have flow meters installed Checked at the end of every month.

20) In what ways is I/I being eliminated? i.e. elimination of roof drains, Manhole rehabilitation, etc. CSO 024 Was Removed May 2012.CSO. CSO 009,013,014,015 Were removed in May 2014 The City of Welch has been informing the public and its customers of their responsibility to remove their storm water from the sanitary sewer system. The City of Welch will be billing a storm water surcharge in the near future to customers with gutters and down spouts still connected to the sanitary sewer system. This should give the effected customers added incentive to separate their storm water from the sanitary sewer system

21) In what ways are solids and floatable material being controlled? i.e. cleaning Of streets, cleaning of catch basins, trash racks, outfall booms, etc. The streets are cleaned on a monthly basis and the catch basins are cleaned as needed by the City of Welch Street Department.

22) Do all CSO outfalls have posted warning signs? Yes

23) Has there been any change in the Operation and Maintenance Program? i.e. change in inspection/repair records, equipment list, procedures/letters, Drawings, personnel, etc.

The City of Welch has more formalized CSO inspection log. The city has also purchased a new sewer camera and utility van.

24) Summarize the status of the following project work activities.

Water Quality Study: The study was completed in 2006

Long Term Control Plan: The City of Welch Sanitary Boards LTCP **has been submitted to Steve Maslowski, Enviromental Protection Agency, Region III and Donald Lewis with the WV DEP and is awaiting joint approval by both agencies.**

25) Has annual newspaper notification been published? yes

26) Are there CSO pamphlets available for distribution to the public? yes

CSO Summary Report

Provide copies of inspection forms for inspecting CSO discharges. Information on forms should include:

1) **Name of inspector**
2) **Time and date of inspection**
3) **Outfall No.(s)**
4) **Comment about whether discharging or not**
5) **Estimated starting and stopping times of discharge**
6) **Estimated total volume (time) of material discharge**
7) **Estimated rainfall for previous 24 hours**
8) **Submit copy of any submitted 24 hour spill report**

Note: CSO's 003,004, 006,009 011, 012,013,014,015 016, 017, 018, 020, 021,024 025, 028 and 029 have been removed from our system.
Feel free to call if you have any questions, (304) 436-2009.

Paul Turpin Collection System Forman

Congressman Evan Jenkins

Kim McMillion, Office Manager
223 Prince Street
Beckley, WV 25801
(304) 250-6177
(304) 250-6179 (fax)

TO: EPA

FAX# 202-501-1519

DATE: 8/4/2015

#of Pages: 9

Message:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 27 2015

The Honorable Evan H. Jenkins
Member, U.S. House of Representatives
223 Prince Street
Beckley, West Virginia 25801

Dear Representative Jenkins:

Thank you for your August 4, 2015 letter to the U.S. Environmental Protection Agency (EPA) on behalf of Mayor Reba Honaker regarding the City of Welch's (City's) efforts to comply with the Clean Water Act (CWA).

EPA and the state of West Virginia entered into a federal consent decree with the City and the Welch Sanitary Board on February 6, 2012. The consent decree requires the City to report every January and July to EPA and the state about its compliance efforts. Mayor Honaker's last letter was the City's July report and the information the Mayor provided is consistent with the decree.

If you have any questions, please do not hesitate to contact me or have your staff contact Mr. Mark Ferrell, EPA's West Virginia Liaison, at 304-542-0231.

Sincerely,

Shawn M. Garvin
Regional Administrator

Congress of the United States
Washington, DC 20515

April 20, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Dear Administrator McCarthy,

We write to you today to express our extreme concern with the Environmental Protection Agency (EPA) Region 10 funded whatsupstream.com website and campaign, which recently has come to our attention. While we appreciate EPA's recent admission that wrongdoing occurred and that the campaign should never have been federally funded,[1] we are still confused why EPA would have approved an award clearly violating a number of federal laws pertaining to funding propaganda, advocacy, and lobbying efforts. We find this revelation particularly disturbing, as it follows closely to both the EPA Office of Inspector General (OIG) questioning of Region 10's award monitoring and a December 2015 Government Accountability Office (GAO) report that found EPA had committed similar violations on social media advocacy campaigns supporting EPA's Waters of the United States (WOTUS) regulation (also known as the "Clean Water Rule").

As you are no doubt aware, federal law clearly directs that, "No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress."[2] Further restrictions clearly prohibit federal funds being used for many of the advocacy and publicity materials used by the whatsupstream.com campaign, including publications, radio, and electronic communications.[3] Despite this stark prohibition, the website whatsupstream.com has a button at the top of its site directing visitors to, "Take Action! We've made it simple." This button loads auto-generated text that will be sent to the visitor's respective Washington State legislators, urging the legislators to support, "stronger laws protecting the health of our water resources in Washington," by encouraging, "100-foot natural buffers between agriculture lands and streams." Additionally this site asserts that, "state government must hold the agricultural industry to the same level of responsibility as other industries...." To be clear, whatsupstream.com has a disclaimer at the bottom of its website stating, "This project has been funded wholly or in part by the United States Environmental Protection Agency." Based on our review of EPA Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS) project reports, it appears that this campaign has been wholly funded by the EPA with no matching funds provided by any private or state and local government entities.[4]

Currently, the Washington State Department of Ecology is in the process of renewing the requirements for its National Pollutant Discharge Elimination System (NPDES) permits for Concentrated Animal Feeding Operations (CAFOs). The Washington State legislature has also considered other water quality and agricultural related legislation during this same time period. These state regulatory and legislative initiatives were pending and under consideration during the same time of the lobbying efforts funded by EPA.

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[1] Don Jenkins, *Capital Press*, April 5, 2016, http://www.capitalpress.com/Nation_World/Nation/20160405/epas-reversal-on-whats-upstream-rings-hollow-to-ag-groups

[2] *Consolidated and Furthering Continuing Appropriations Act, 2013*, Public Law 113-6, 127 Stat. 269 (2013)

[3] *Consolidated Appropriations Act, 2014*, Public Law 113-76, 128 Stat. 408 (2014)

[4] EPA Puget Sound Financial and Ecosystem Accounting Tracking Systems, PA-00J322-01, September 30, 2015, http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY12-4.1.15-9.30.15.pdf

What is more disturbing is that a July 14, 2014 report by the EPA's OIG found that Region 10 EPA project officers, "emphasized overall progress rather than compliance with specific subaward requirements. This emphasis on overall progress increased the risk that project officers would not detect issues needing corrective action that might impact the project meeting its goals." The report also found that of a sample of ten different EPA subawards, only three had protocols in place to ensure 501(c)(4) subaward recipients did not engage in lobbying activities.[5] Despite these warning signs, an October 30, 2015 EPA Region 10 FEATS report pertaining to the whatsupstream.com project concluded that, "As a result of extensive review and engagement by EPA, we have been revising the website, and have to [*sic*] restarted media outreach."[6] This conclusion would seem to suggest that, even in spite of OIG's report, EPA reviewed, engaged, and approved of the current whatsupstream.com website that is in blatant violation of federal law.

As mentioned, on December 14, 2015, GAO issued an opinion finding that EPA violated propaganda and anti-lobbying laws by using certain social media platforms in association with the WOTUS regulation. By obligating and expending appropriated funds in violation of specific prohibitions contained in appropriations acts for fiscal years 2014 and 2015, GAO found EPA also violated the *Antideficiency Act*.[7] The whatsupstream.com campaign appears to be part of an alarming trend where EPA engages in funding advocacy efforts against the very entities it is seeking to regulate. EPA cannot systematically choose when it wishes to follow the law and when it does not. Congress has made it explicitly clear that EPA's funding may not be used, "for publicity or propaganda purposes designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government."[8]

We are aware that Senators Inhofe and Roberts recently sent a letter to the EPA OIG requesting an official audit and investigation into the whatsupstream.com campaign and related activities, and the House Committee on Agriculture is conducting a related oversight investigation of EPA grant management. We fully support these requests, and strongly advise EPA's full and swift cooperation with all investigations and imminent oversight inquiries into this matter.

Sincerely,

Dan Newhouse
Member of Congress

Brad Ashford
Member of Congress

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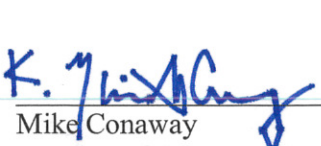
[5] Collins, Eileen et al., *EPA Should Improve Oversight and Assure the Environmental Results of the Puget Sound Cooperative Agreements* (EPA OIG Report No. 14-P-0317) (Washington, DC: Environmental Protection Agency Office of Inspector General, 2014), 8, https://www.epa.gov/sites/production/files/2015-09/documents/20140715-14-p-0317.pdf

[6] EPA Puget Sound Financial and Ecosystem Accounting Tracking Systems, PA-00J322-01, October 30, 2015, http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY13-4.1.15-9.30.15.pdf

[7] Poling, Susan A., *Environmental Protection Agency--Application of Publicity or Propaganda and Anti-Lobbying Provisions* (B-326944) (Washington, DC: U.S. Government Accountability Office, 2015), http://www.gao.gov/assets/680/674163.pdf

[8] *Consolidated and Further Continuing Appropriations Act, 2015*, Public Law 113-235, 128 Stat. 2393 (2014)

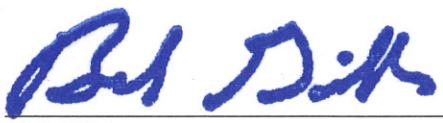


Mike Conaway
Member of Congress

Collin C. Peterson
Member of Congress

Rick Crawford
Member of Congress

Jim Costa
Member of Congress

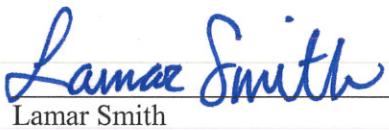


Bob Gibbs
Member of Congress

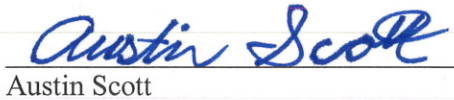
Frank D. Lucas
Member of Congress

Bob Goodlatte
Member of Congress

Doug Lamborn
Member of Congress



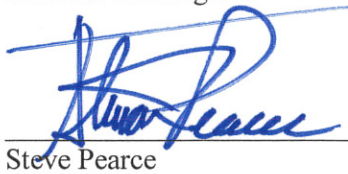
Lamar Smith
Member of Congress



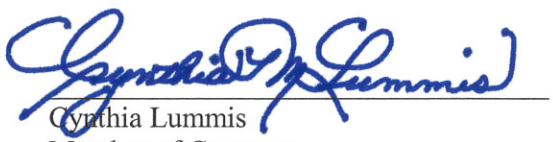
Austin Scott
Member of Congress

Mick Mulvaney
Member of Congress

Kristi Noem
Member of Congress



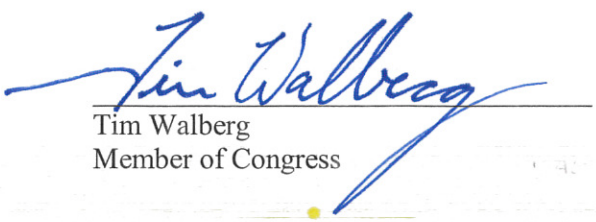
Steve Pearce
Member of Congress



Cynthia Lummis
Member of Congress

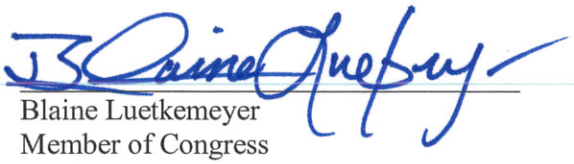
Brett Guthrie
Member of Congress

Trent Franks
Member of Congress



Tim Walberg
Member of Congress

Tom Reed
Member of Congress



Blaine Luetkemeyer
Member of Congress

Tom Graves
Member of Congress

Robert E. Latta
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Stephen Fincher
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Darin LaHood
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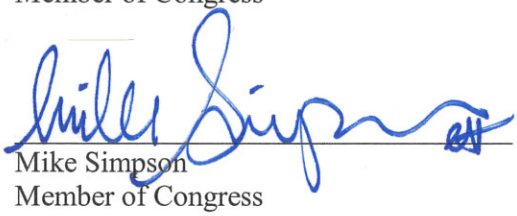
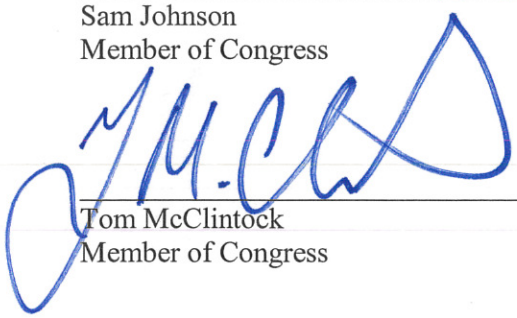
Dana Rohrabacher
Member of Congress

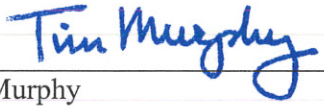
Sam Johnson
Member of Congress



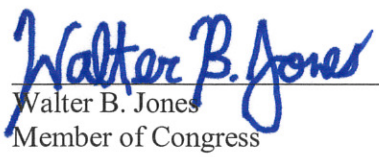
Mike Simpson
Member of Congress



Tom McClintock
Member of Congress

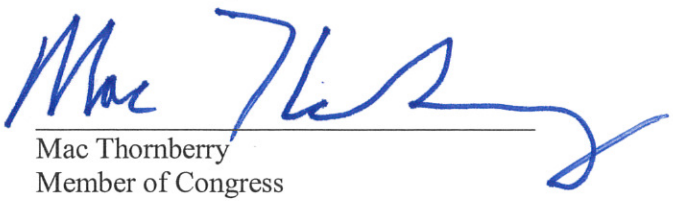


Tim Murphy
Member of Congress

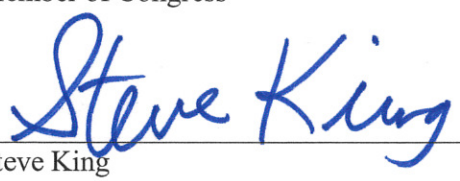


Walter B. Jones
Member of Congress

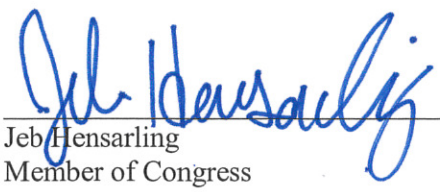
Steve Chabot
Member of Congress



Mac Thornberry
Member of Congress



Steve King
Member of Congress



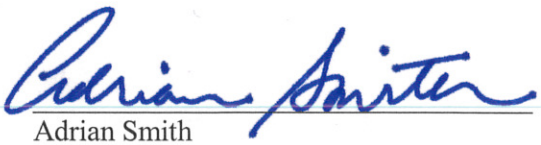
Jeb Hensarling
Member of Congress

Pete Sessions
Member of Congress

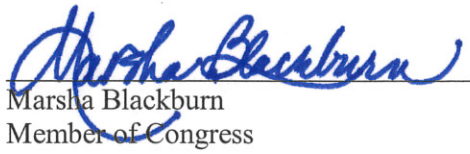
Vicky Hartzler
Member of Congress

Jason Chaffetz
Member of Congress

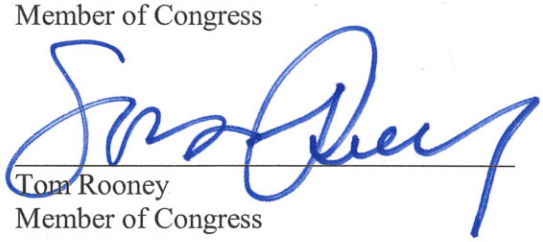
Michael R. Turner
Member of Congress



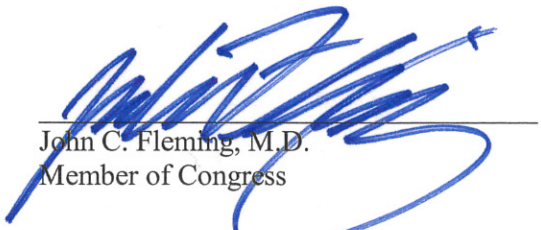
Adrian Smith
Member of Congress



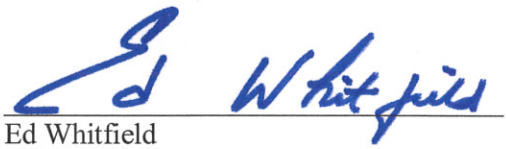
Marsha Blackburn
Member of Congress



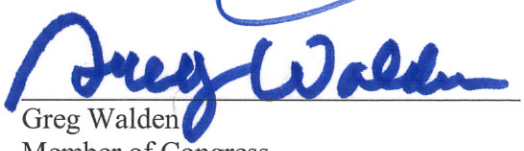
Tom Rooney
Member of Congress



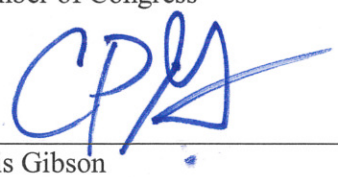
John C. Fleming, M.D.
Member of Congress



Ed Whitfield
Member of Congress

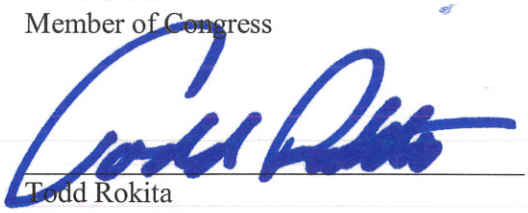


Greg Walden
Member of Congress



Chris Gibson
Member of Congress

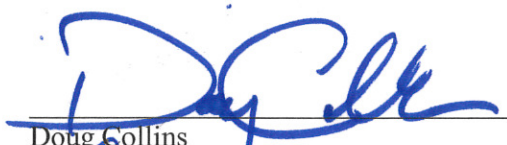
Bill Johnson
Member of Congress



Todd Rokita
Member of Congress

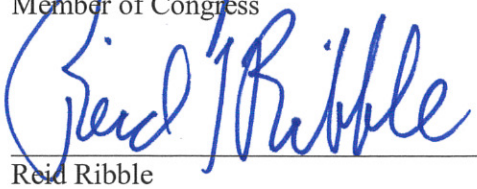
Dave Trott
Member of Congress

Rodney Davis
Member of Congress



Doug Collins
Member of Congress

Susan Brooks
Member of Congress

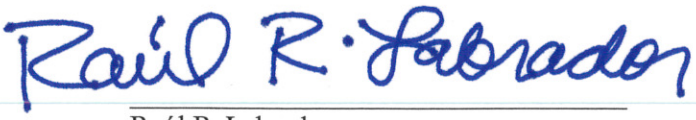


Reid Ribble
Member of Congress

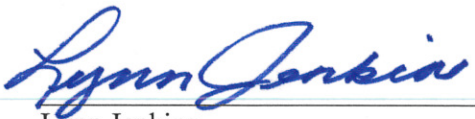
Lee Zeldin
Member of Congress

Mike Kelly
Member of Congress

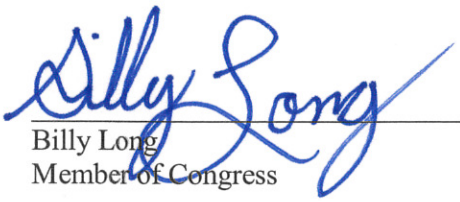
Jim Jordan
Member of Congress



Raúl R. Labrador
Member of Congress

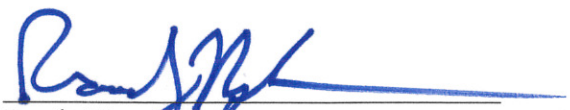


Lynn Jenkins
Member of Congress

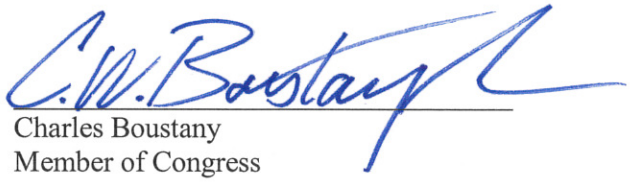


Billy Long
Member of Congress

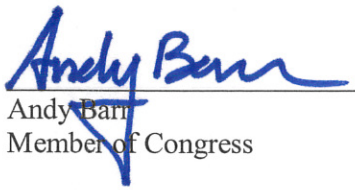
Sam Graves
Member of Congress



Randy Neugebauer
Member of Congress

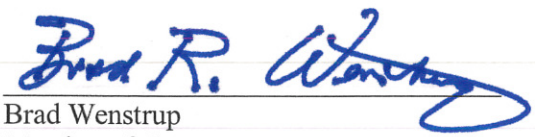


Charles Boustany
Member of Congress

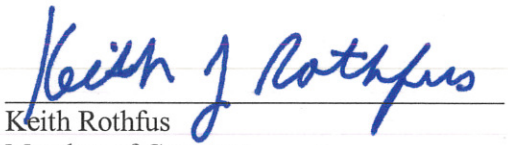


Andy Barr
Member of Congress

Mike Bost
Member of Congress



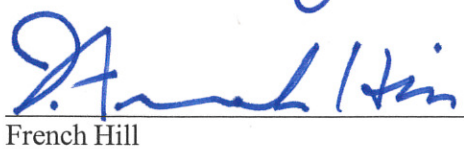
Brad Wenstrup
Member of Congress



Keith Rothfus
Member of Congress

Sean Duffy
Member of Congress

Renee Ellmers
Member of Congress



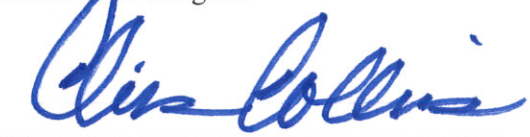
French Hill
Member of Congress

Mo Brooks
Member of Congress

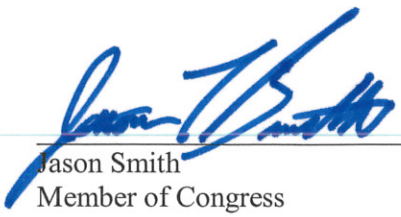
Morgan Griffith
Member of Congress

Tim Huelskamp
Member of Congress

Markwayne Mullin
Member of Congress



Chris Collins
Member of Congress



Jason Smith
Member of Congress

Steve Womack
Member of Congress

Jaime Herrera Beutler
Member of Congress

David G. Valadao
Member of Congress

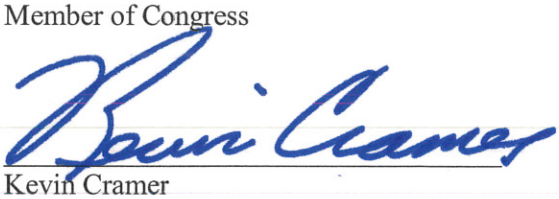
Devin Nunes
Member of Congress

Steve Stivers
Member of Congress

Mark Meadows
Member of Congress

Blake Farenthold
Member of Congress

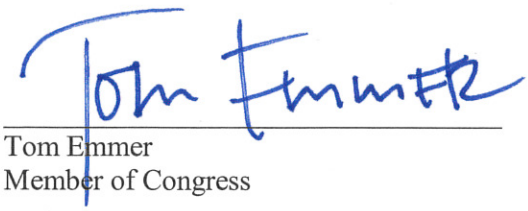
Martha McSally
Member of Congress



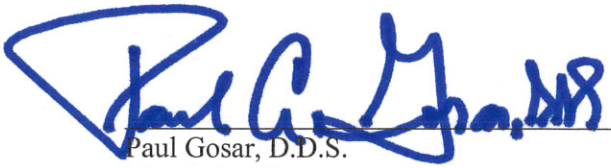
Kevin Cramer
Member of Congress

Glenn Grothman
Member of Congress

Evan Jenkins
Member of Congress



Tom Emmer
Member of Congress

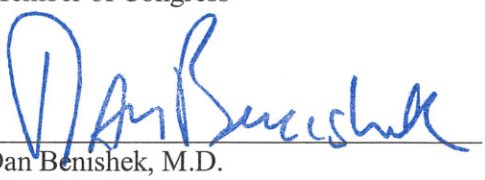


Paul Gosar, D.D.S.
Member of Congress

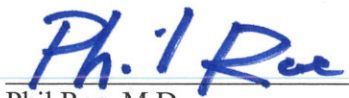
Luke Messer
Member of Congress

Randy Weber
Member of Congress

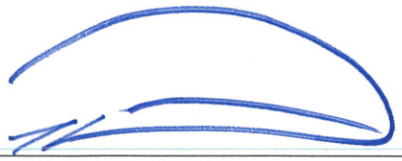
Ted S. Yoho, DVM
Member of Congress



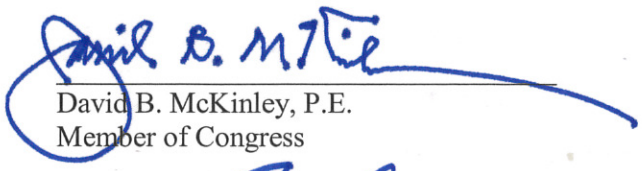
Dan Benishek, M.D.
Member of Congress



Phil Roe, M.D.
Member of Congress

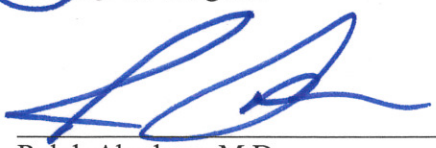


Scott DesJarlais, M.D.
Member of Congress



David B. McKinley, P.E.
Member of Congress

Ken Buck
Member of Congress

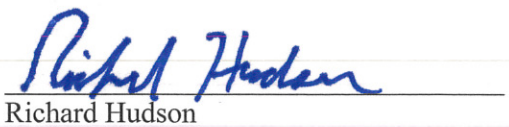


Ralph Abraham, M.D.
Member of Congress

Jackie Walorski
Member of Congress

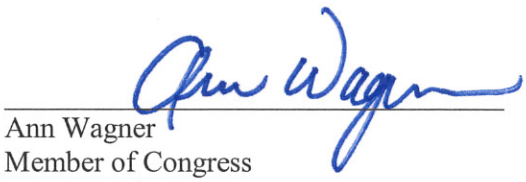
David Rouzer
Member of Congress

Mike Bishop
Member of Congress

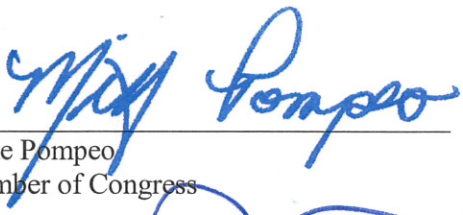


Richard Hudson
Member of Congress

Earl L. 'Buddy' Carter
Member of Congress

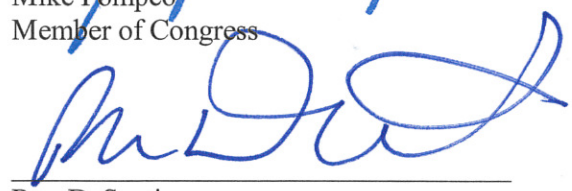


Ann Wagner
Member of Congress



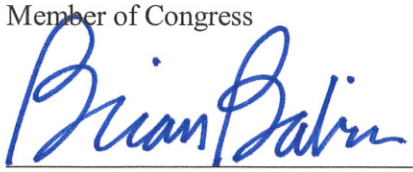
Mike Pompeo
Member of Congress

Kevin Brady
Member of Congress



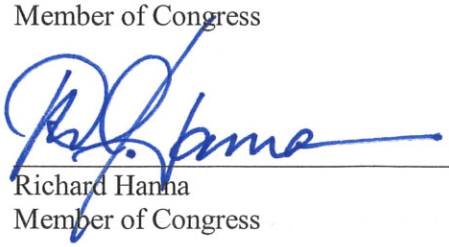
Ron DeSantis
Member of Congress

Mark Walker
Member of Congress



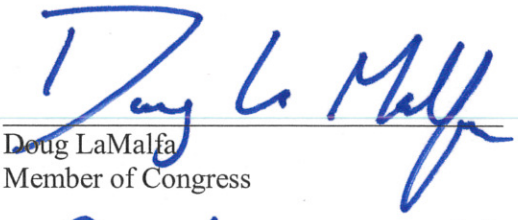
Brian Babin
Member of Congress

Will Hurd
Member of Congress



Richard Hanna
Member of Congress

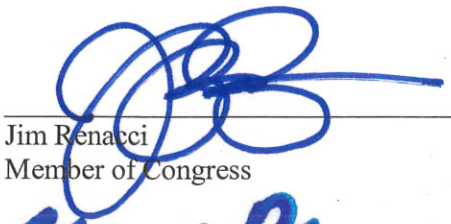
Candice Miller
Member of Congress



Doug LaMalfa
Member of Congress

Mike D. Rogers
Member of Congress

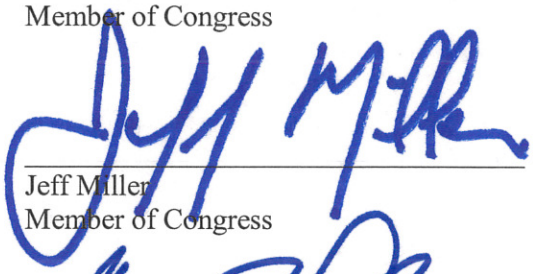
John Ratcliffe
Member of Congress



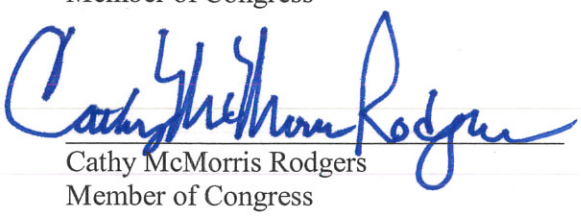
Jim Renacci
Member of Congress

Dave Brat
Member of Congress

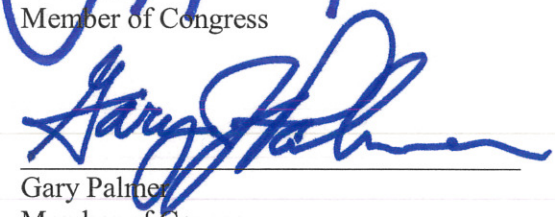
Steven Palazzo
Member of Congress



Jeff Miller
Member of Congress

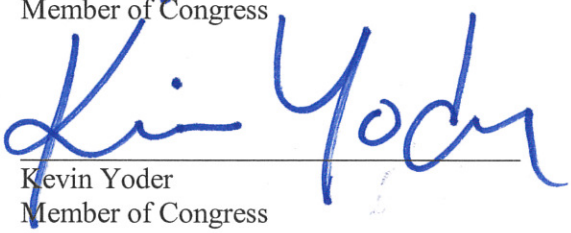


Cathy McMorris Rodgers
Member of Congress

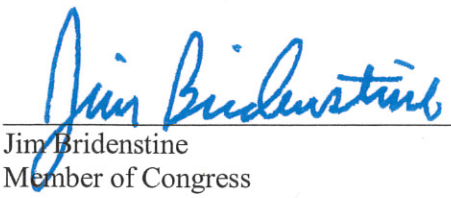


Gary Palmer
Member of Congress

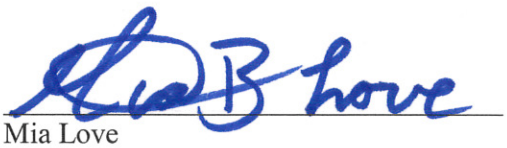
Rod Blum
Member of Congress



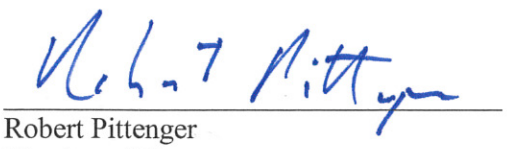
Kevin Yoder
Member of Congress



Jim Bridenstine
Member of Congress

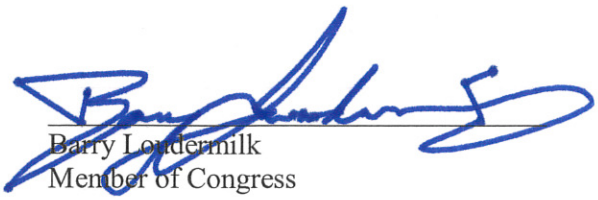


Mia Love
Member of Congress

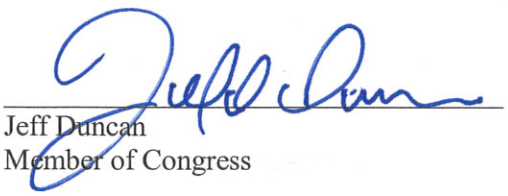


Robert Pittenger
Member of Congress

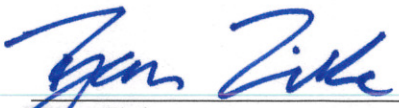
Mimi Walters
Member of Congress



Barry Loudermilk
Member of Congress



Jeff Duncan
Member of Congress



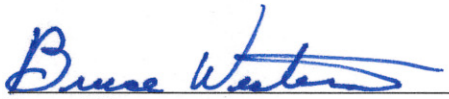
Ryan Zinke
Member of Congress

John Moolenaar
Member of Congress

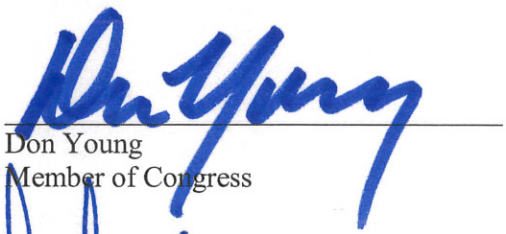
Bradley Byrne
Member of Congress

Bill Posey
Member of Congress

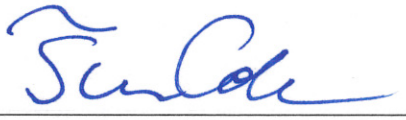
Glenn 'GT' Thompson
Member of Congress



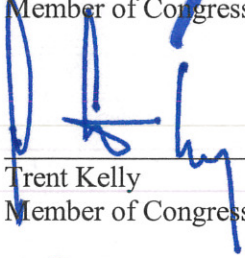
Bruce Westerman
Member of Congress



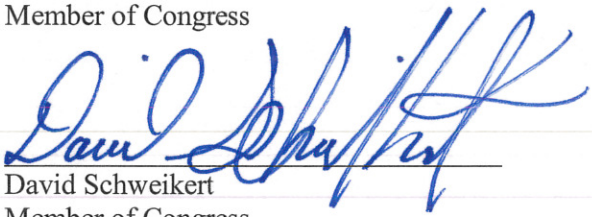
Don Young
Member of Congress



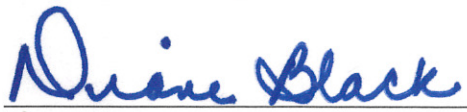
Tom Cole
Member of Congress



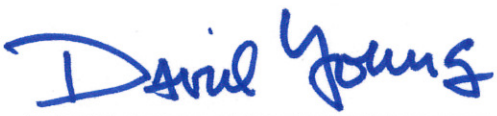
Trent Kelly
Member of Congress



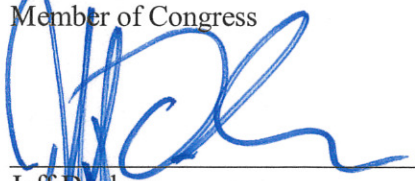
David Schweikert
Member of Congress



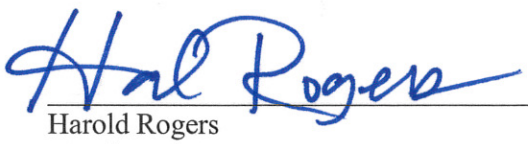
Diane Black
Member of Congress



David Young
Member of Congress



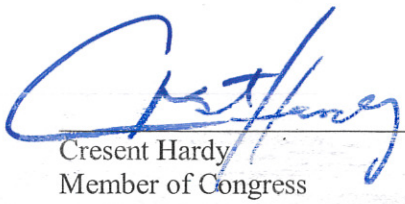
Jeff Denham
Member of Congress



Harold Rogers
Member of Congress

Dave Reichert
Member of Congress

Bill Flores
Member of Congress



Cresent Hardy
Member of Congress

cc: Mr. Gene Dodaro, Comptroller General, U.S. Government Accountability Office
Mr. Arthur Elkins, Jr., Inspector General, Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF THE REGIONAL ADMINISTRATOR

JUN 23 2016

The Honorable Dan Newhouse
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Brad Ashford
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Newhouse and Representative Ashford:

Thank you for your April 20, 2016, letter to United States Environmental Protection Agency Administrator Gina McCarthy regarding the EPA's Cooperative Agreement with the Northwest Indian Fisheries Commission and a sub-award made under that Cooperative Agreement by NWIFC to the Swinomish Indian Tribal Community for a "Non-Point Pollution Public Information and Education Initiative." The Administrator asked that I respond on her behalf.

The EPA places a high value on collaboration with our partners in the agricultural and tribal communities. We are particularly proud of the work we've done in the Pacific Northwest with the agriculture community and the tribes in seeking -- and frequently finding -- common ground on issues such as water quality monitoring, scientific research and uplands restoration projects.

Puget Sound in northwest Washington is an estuary of national significance under the U.S. Clean Water Act National Estuary Program. The EPA provides expertise and financial assistance to state, local and tribal governments to support research and restoration projects that help implement the State of Washington's Puget Sound Action Agenda. This Action Agenda serves as the state's Comprehensive Conservation and Management Plan required under the Clean Water Act National Estuary Program.

In support of the Action Agenda, EPA Region 10 awarded a cooperative agreement to the NWIFC in 2010, to support the work of 21 federally recognized Puget Sound tribes and tribal consortia who implement protection and restoration projects consistent with the Puget Sound Action Agenda. The Swinomish Tribe is one of the sub-recipients and, accordingly, received annual incremental funding for an education and outreach project focused on the critical need to reduce non-point source water pollution to protect Puget Sound water quality and critical salmon habitat. Four Pacific salmon species in Puget Sound are listed as threatened under the Endangered Species Act, in turn threatening the treaty-reserved rights of many Puget Sound tribes to harvest this natural resource so central to their communities, economies, and cultures.

The Swinomish Tribe's project included building a public information and awareness website. The EPA engaged with the Commission and the Swinomish Tribe over the past five years to discuss proposed annual work plans and some specific tasks such as the website. EPA has provided technical assistance and coordination in the form of comments and recommendations. However, a cooperative agreement is fundamentally different from a contract and the EPA does not have the ability to direct the content of the

work product of a grantee or sub-recipient in the same manner as a contractor. In addition, under the terms of the cooperative agreement, the Commission has the responsibility of monitoring sub-recipients' performance and ensuring compliance with applicable terms and conditions, regulations, and statutes. The EPA's involvement in the sub-recipient's project has focused on providing technical input during routine proposal reviews and flagging potential areas of non-compliance with grant terms and conditions, laws, regulations and policies. For example, the EPA has provided advice to the Commission and the Swinomish Tribe regarding the lobbying restrictions applicable to grants.

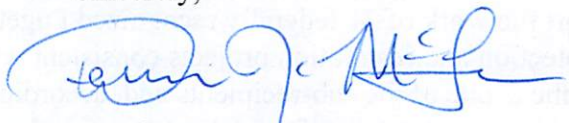
The EPA takes the concerns that have been expressed by members of Congress and other parties very seriously. In an April 18, 2016, letter (enclosed), the EPA asked the Commission to suspend all expenditures under the sub-award to the Swinomish Tribe and requested the Commission conduct a review of its sub-award to the Tribe. During a meeting on April 25, 2016, the Commission confirmed that all advertising related to the sub-award had stopped, and costs related to billboards have not and will not be paid with funding Congress appropriates to the EPA. The Commission is continuing its assessment of the sub-award in relationship to EPA grant policies, terms, and conditions, and will be setting up a meeting between the EPA, the Commission, and the Swinomish Tribe to review the results.

I want to assure you that collaboration with our partners in the agricultural community is of great importance to the EPA. To exemplify our efforts regarding work with the agricultural community, in the past three years over $12 million of EPA funds have been used to support collaboration with agriculture partners in Puget Sound to restore and protect riparian habitat and to reduce non-point source pollution.

The 2014 OIG report cited in your letter concluded, "…that EPA Region 10 is effectively administering cooperative agreements and monitoring project progress to determine whether proposed outputs and outcomes were achieved" (OIG, Report 14-P-0317, At a Glance, July 15, 2014). The OIG provided several recommendations, which EPA has addressed. We continue to provide strong oversight of the grants funded through the Puget Sound program.

Again, thank you for your interest in the EPA's grant activities. If you have any further questions, please contact me, or your staff may contact Kyle Aarons, in the EPA's Office of Congressional and Intergovernmental Relations at aarons.kyle@epa.gov or (202) 564-7351.

Sincerely,



Dennis J. McLerran
Regional Administrator

Enclosure

United States Senate

WASHINGTON, DC 20510

June 28, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

We are writing to request your support for the Petition for Small Refinery Hardship Relief recently submitted by Ergon West Virginia, Inc. ("Petitioner").

The small refinery hardship standard was reinterpreted under an Addendum to the Small Refinery Exemption Study issued in May 2014 without public notice or comment. This reinterpretation is inconsistent with Congress' intent.

Congressional intent regarding small refinery hardship was reiterated in the Omnibus legislation signed into law December 18, 2015 (P.L. 113-114). Specifically, Congress stressed that it did not intend for small refineries to bear a higher cost for compliance with the RFS than large refiners, and the ability of a small refiner to comply and remain profitable does not justify a higher cost of compliance.

Ergon West Virginia, Inc. is experiencing disproportionate costs of compliance with the RFS that are largely attributable to its disproportionate production of diesel fuel relative to the production of gasoline. Refiners like Ergon West Virginia, Inc. who disproportionately produce more diesel fuel than the industry average, cannot generate enough RINs through blending because of the limitations on how much biodiesel can be blended into diesel. Because obligations under the RFS program are calculated on combined gasoline and diesel production, the petitioners are then forced to buy RINs to comply. In other words, Ergon West Virginia is losing money on each gallon of diesel fuel they produce.

We respectfully request that the EPA, in consultation with DOE, grant the Petitioner's requested relief from their disproportionately high compliance costs under the RFS requirements. Thank you for your consideration.

Sincerely,

Joe Manchin III
United States Senator

Shelley Moore Capito
United States Senator

David McKinley
Member of Congress

Evan Jenkins
Member of Congress

Alex Mooney
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 3 0 2016

OFFICE OF
AIR AND RADIATION

The Honorable Evan Jenkins
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Jenkins:

Thank you for your June 28, 2016, letter to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the petitions for small refinery hardship relief submitted by Ergon-West Virginia, Inc. (EWV). The Administrator asked that I respond on her behalf.

The EPA treats its decisions on small refinery petitions for exemption from the Renewable Fuel Standard (RFS) as confidential business information (CBI). For that reason I cannot share specifics about our decisions on the Ergon refineries with you. However, I can tell you that we issued a decision responding to EWV's petition for small refinery hardship relief for 2014 and 2015 on June 30, 2016. EWV also petitioned for small refinery hardship relief for 2016. This petition remains under evaluation.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Pat Haman in the EPA's Office of Congressional and Intergovernmental Relations at haman.patricia@epa.gov or (202) 564-2806.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

Congress of the United States
Washington, DC 20515

June 23, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy:

We write regarding the Supreme Court's orders granting applications from states and stakeholders to stay the "Clean Power Plan" (CPP) and your statements in a March 2016 congressional hearing on the implications of the Court's action. Specifically, we seek clarification to ensure that your statements do not result in states and other stakeholders expending scarce resources to unnecessarily comply with the CPP's deadlines. It is our belief that such actions would undermine the very purpose of the Court's orders.

As you know, five applications for relief were submitted to the Court, each requesting a stay of the CPP. One of those applications also explicitly requested "an immediate stay of EPA's rule, extending all compliance dates by the number of days between publication of the rule and a final decision by the courts, including this Court, relating to the rule's validity." Another asked that the CPP be "be stayed, and all deadlines in it suspended, pending the completion of all judicial review." Every brief opposing the applications acknowledged the requests to extend the compliance deadlines.

Moreover, long-held precedence recognizes that any request for stay carries with it the inherent tolling of all compliance deadlines if that stay were lifted. Thus, the Department of Justice stated in its brief, "In requesting a 'stay,' however, applicants . . . *explicitly or implicitly* ask this Court *to toll all of the relevant deadlines* set forth in the Rule, even those that would come due many years after the resolution of their challenge, for the period between the Rule's publication and the final disposition of their lawsuits" (emphasis added). In fact, the Department of Justice told the Court that granting the applications "would *necessarily and irrevocably* extend every deadline set forth in the Rule" (emphasis added).

On February 9, 2016 the Court issued five separate and virtually identical orders on the applications. Each order stated, "The application for a stay . . . is granted." We agree with the Department of Justice that in granting these applications without limitation, the Supreme Court both stayed the CPP and necessarily and irrevocably extended all related CPP compliance deadlines.

In a March 22, 2016 hearing before two House Energy and Commerce subcommittees, you were asked whether—if the CPP was upheld—the various compliance deadlines would also be extended by the amount of time equal to the completion of judicial review. In your response, you

stated, "Well that's not what the Supreme Court said, but we assume that the courts will make that judgement over time or will leave that to EPA to make their own judgement." When pressed further, you responded by saying, ". . . the Supreme Court didn't speak to that issue. The only thing they spoke to was the stay of the rule. They didn't speak to any tolling or what it meant in terms of compliance time."

As the Department of Justice's own conclusions make clear, the Court did speak to tolling when it granted the applications for relief that explicitly or implicitly requested the tolling of compliance deadlines. Those Court orders necessarily and irrevocably extended the CPP's deadlines, allowing states to hit "pause" on compliance measures during legal challenge of the CPP, so that states are not required to spend billions of dollars on immense, and in many cases irreversible, actions to implement a regulation that may never come. This harm is what drove petitioners to request relief from the Supreme Court in the first place.

We are concerned that your statements before Congress undermine the certainty that the American people deserve and the Supreme Court was seeking to provide when it granted applications to stay the CPP and toll its deadlines. If ambiguity here drives states and stakeholders to meet all CPP compliance deadlines anyway, then the Court's action will be meaningless.

In order to provide clarity to the states, utilities, and other critical stakeholders, we respectfully ask you to provide answers to the following questions:

1. Two of the applications for relief from the CPP submitted to the Supreme Court explicitly asked the Court to extend all CPP deadlines for a period equal to that of the stay. The Department of Justice concluded that all of the applications made the same request, if not explicitly, then implicitly. The Court granted these requests for relief without any limitation. How do you reconcile these facts with your claim that "the Court didn't speak to any tolling"?

2. Did any EPA official review the Department of Justice's brief in response to the applications before that brief was submitted to the Supreme Court?

3. At any point before the Supreme Court issued its orders on February 9, 2016, did any EPA official object to language in the Department of Justice's brief concluding that granting the stay "would necessarily and irrevocably extend every deadline set forth in the Rule"? Does EPA now disagree with that conclusion? If so, please provide EPA's official legal interpretation.

4. Is EPA relying on specific precedent to conclude the stay order does not toll all deadlines outlined in the final CPP rule? If so, include any such examples or case law in EPA's interpretive memo as requested in question 3 above.

5. If EPA does not disagree with the Department of Justice's conclusion that the relief requested and granted by the Court "necessarily and irrevocably" extends all CPP deadlines, then what steps is EPA taking to prepare to extend all CPP deadlines in the event the stay is lifted?

6. Why is it necessary for the Court's orders staying the CPP to "speak to any tolling" if, by the Department of Justice's own admission, those orders "implicitly," "necessarily," and "irrevocably" "extend every deadline set forth in the Rule"?

7. The Supreme Court stayed the CPP to prevent states and stakeholders from being irreparably harmed by the rule's deadlines during the judicial challenge. How would the Court's order protect states and stakeholders from irreparable harm if, upon reinstatement of the rule, those states and stakeholders did not receive an equivalent length of time to comply with the CPP?

8. EPA officials have stated the agency is developing regulations expressly related to and arising out of the final CPP, specifically the Clean Energy Incentive Plan (CEIP). The program is intrinsically linked to the implementation of the CPP and a public request for comment through issuing a proposed rule would effectively obligate stakeholders to the current CPP litigation to dedicate resources to study and comment on the proposed regulation. Given that the CEIP's fate is directly tied to the CPP litigation, what authority is the EPA relying on to conclude these actions do not contravene the Supreme Court's stay of CPP?

We look forward to your response on this matter.

Sincerely,

JOHN RATCLIFFE
Member of Congress

BRUCE WESTERMAN
Member of Congress

MIMI WALTERS
Member of Congress

CYNTHIA M. LUMMIS
Member of Congress

DAVID B. MCKINLEY, P.E.
Member of Congress

KEVIN CRAMER
Member of Congress

STEVE STIVERS
Member of Congress

BOB GIBBS
Member of Congress

LOUIE GOHMERT
Member of Congress

PETE SESSIONS
Member of Congress

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Member of Congress

STEVE RUSSELL
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DAVE BRAT
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TRENT FRANKS
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LAMAR SMITH
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COLLIN C. PETERSON
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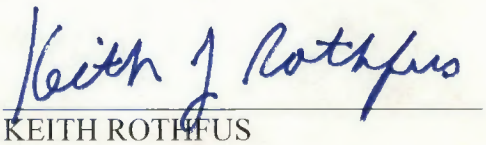
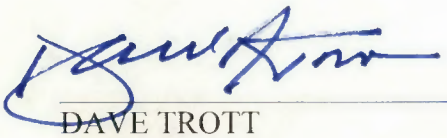
TOM GRAVES
Member of Congress

PAUL A. GOSAR
Member of Congress

MARTHA MCSALLY
Member of Congress



KEITH ROTHFUS
Member of Congress



DAVE TROTT
Member of Congress

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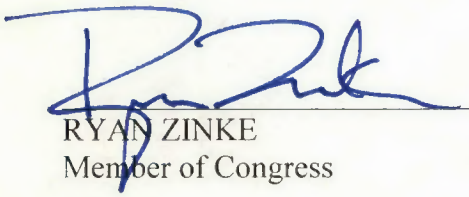
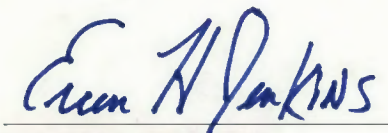
Member of Congress



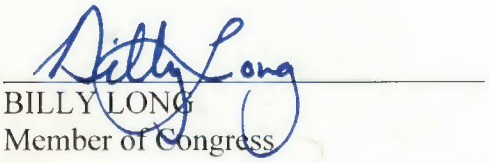
RYAN ZINKE
Member of Congress

DAVID SCHWEIKERT
Member of Congress

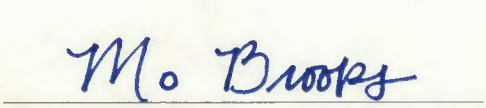


EVAN H. JENKINS
Member of Congress

RALPH ABRAHAM, M.D.
Member of Congress

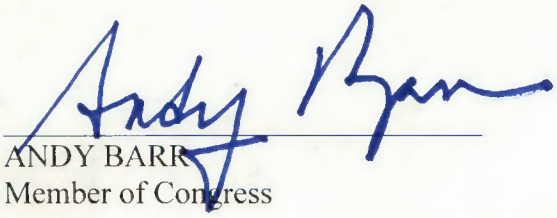


BILLY LONG
Member of Congress

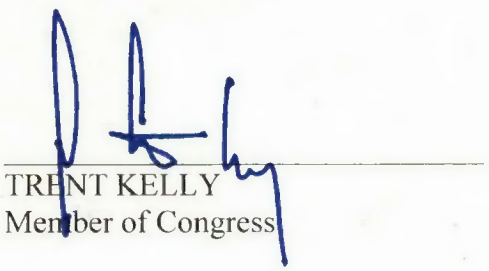


MO BROOKS
Member of Congress

RANDY WEBER
Member of Congress

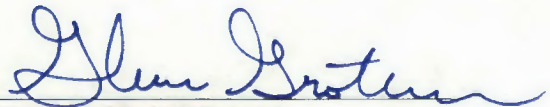


ANDY BARR
Member of Congress



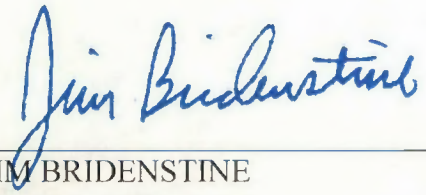
TRENT KELLY
Member of Congress

H. MORGAN GRIFFITH
Member of Congress

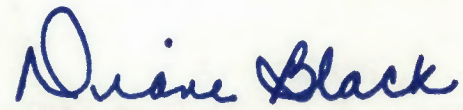


GLENN GROTHMAN
Member of Congress

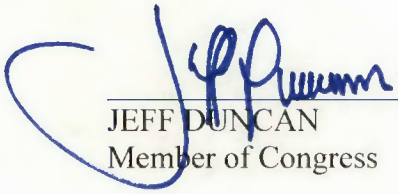
FRANK LUCAS
Member of Congress



JIM BRIDENSTINE
Member of Congress

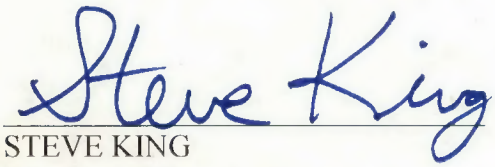


DIANE BLACK
Member of Congress



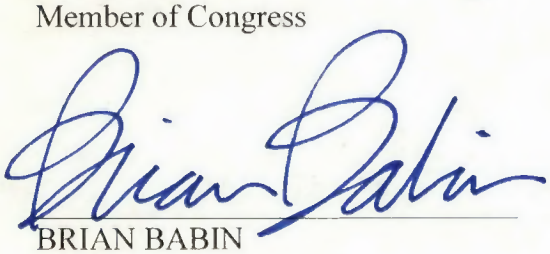
JEFF DUNCAN
Member of Congress

JIM RENACCI
Member of Congress

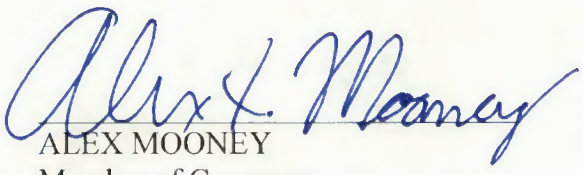


STEVE KING
Member of Congress

JOE BARTON
Member of Congress



BRIAN BABIN
Member of Congress



ALEX MOONEY
Member of Congress

JACKIE WALORSKI
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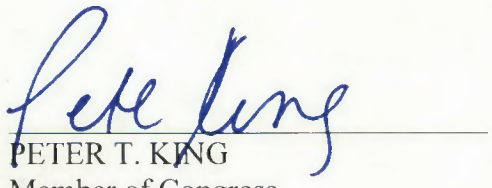
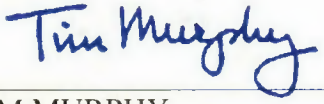
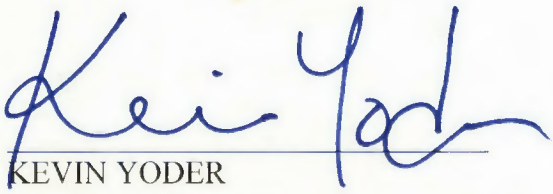


PETER T. KING
Member of Congress

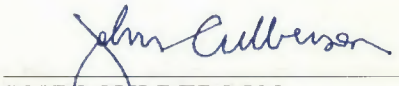


TIM MURPHY
Member of Congress

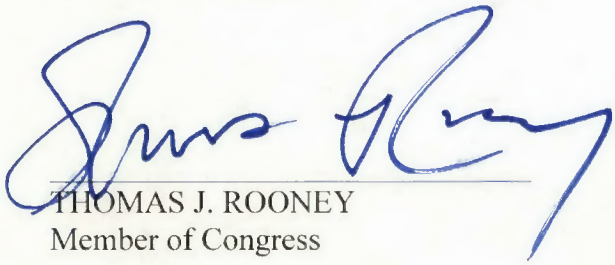
STEVE CHABOT
Member of Congress



KEVIN YODER
Member of Congress

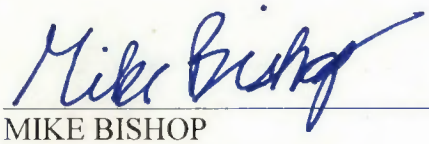


JOHN CULBERSON
Member of Congress

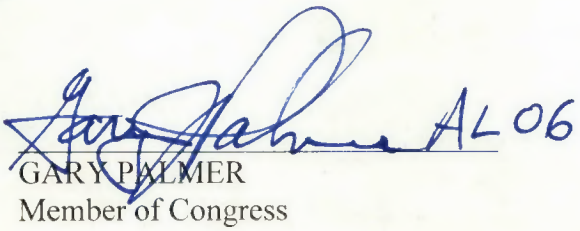


THOMAS J. ROONEY
Member of Congress

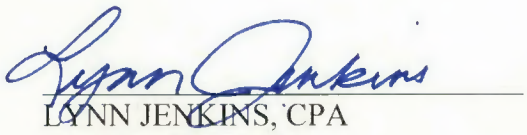
MICK MULVANEY
Member of Congress



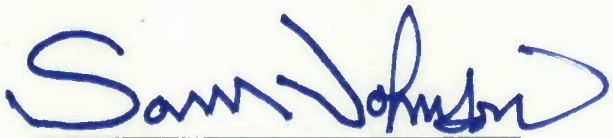
MIKE BISHOP
Member of Congress



GARY PALMER
Member of Congress



LYNN JENKINS, CPA
Member of Congress

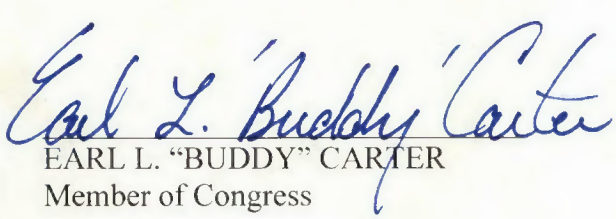


SAM JOHNSON
Member of Congress

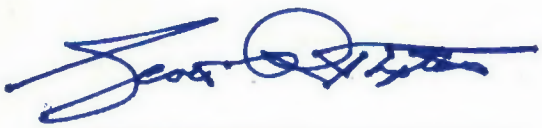
MIKE ROGERS
Member of Congress

HAROLD ROGERS
Member of Congress

LUKE MESSER
Member of Congress

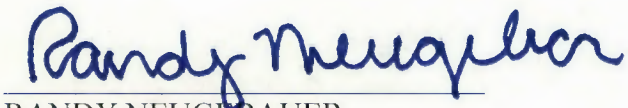


EARL L. "BUDDY" CARTER
Member of Congress



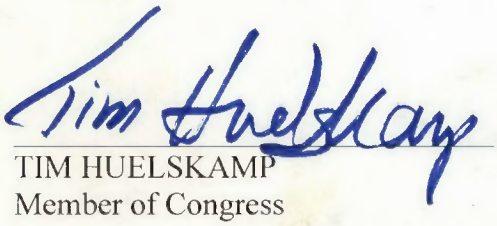
SCOTT TIPTON
Member of Congress

BOB GOODLATTE
Member of Congress



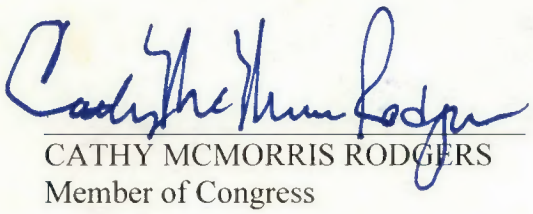
RANDY NEUGEBAUER
Member of Congress

MIKE KELLY
Member of Congress

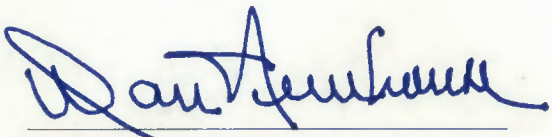


TIM HUELSKAMP
Member of Congress

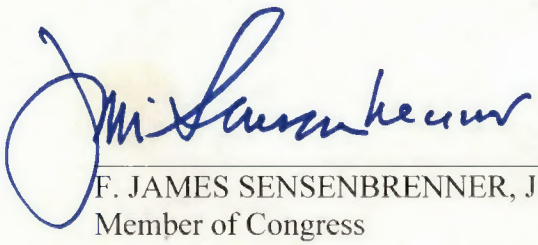
MICHAEL T. MCCAUL
Member of Congress



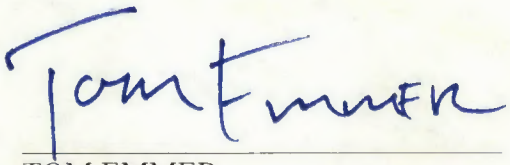
CATHY MCMORRIS RODGERS
Member of Congress



DAN NEWHOUSE
Member of Congress

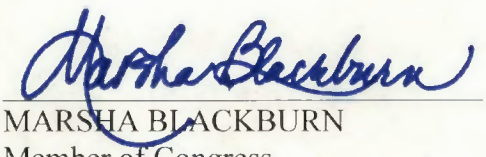


F. JAMES SENSENBRENNER, JR.
Member of Congress

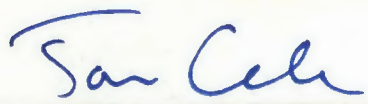


TOM EMMER
Member of Congress

DAVID P. JOYCE
Member of Congress

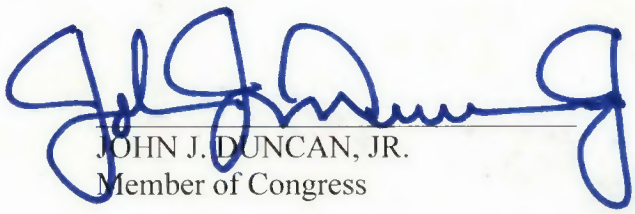


MARSHA BLACKBURN
Member of Congress

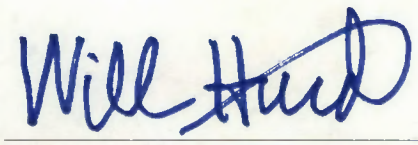


TOM COLE
Member of Congress

TOM MCCLINTOCK
Member of Congress

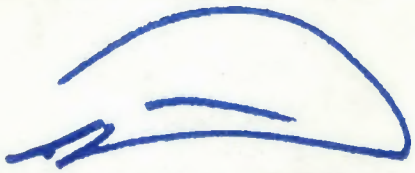


JOHN J. DUNCAN, JR.
Member of Congress

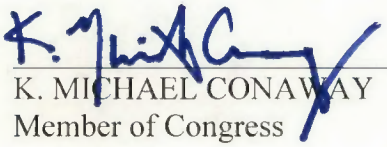


WILL HURD
Member of Congress

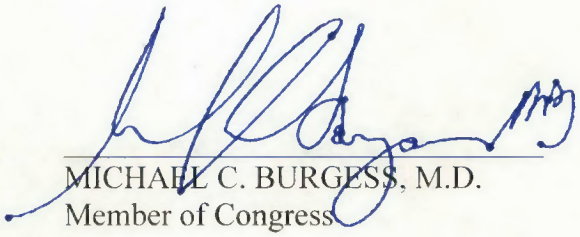
DOUG LAMBORN
Member of Congress



SCOTT DESJARLAIS, M.D.
Member of Congress

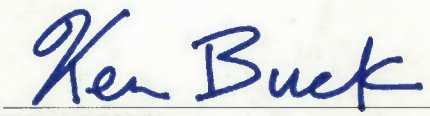


K. MICHAEL CONAWAY
Member of Congress

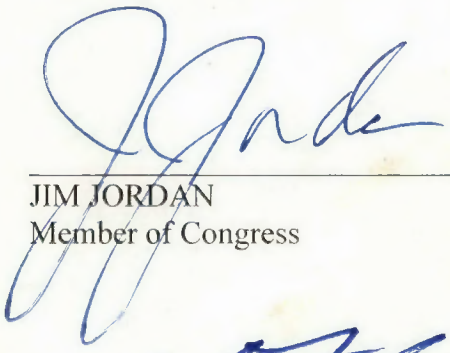


MICHAEL C. BURGESS, M.D.
Member of Congress

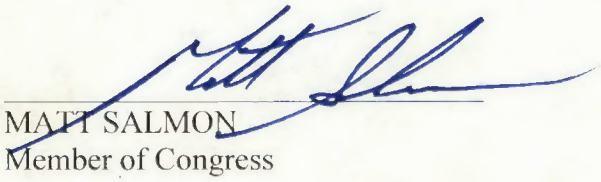
BRETT GUTHRIE
Member of Congress



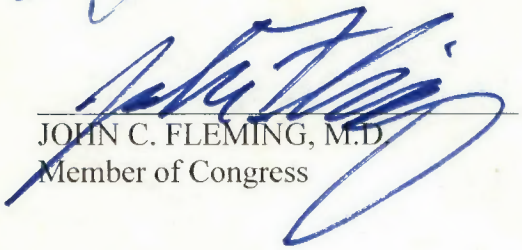
KEN BUCK
Member of Congress



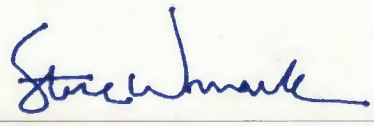
JIM JORDAN
Member of Congress



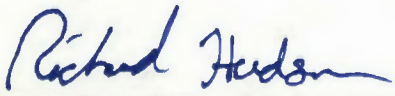
MATT SALMON
Member of Congress



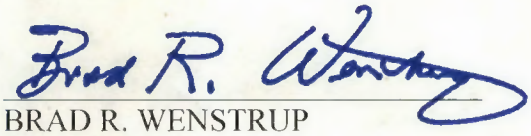
JOHN C. FLEMING, M.D.
Member of Congress



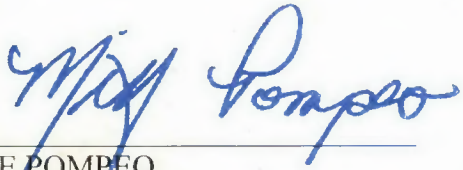
STEVE WOMACK
Member of Congress



RICHARD HUDSON
Member of Congress

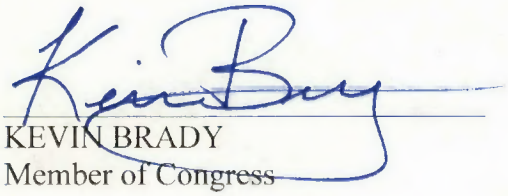


BRAD R. WENSTRUP
Member of Congress

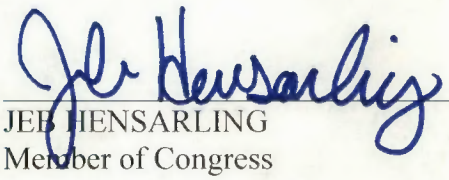


MIKE POMPEO
Member of Congress

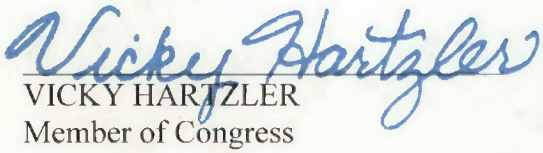
JASON CHAFFETZ
Member of Congress



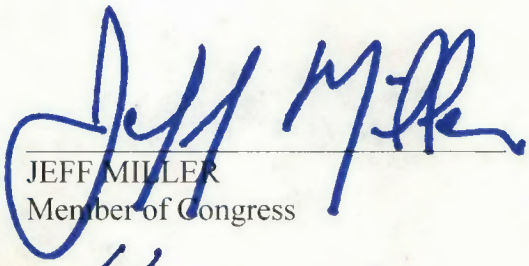
KEVIN BRADY
Member of Congress



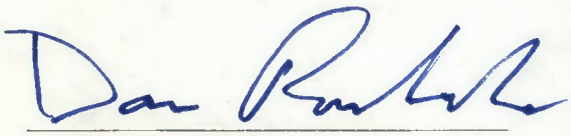
JEB HENSARLING
Member of Congress



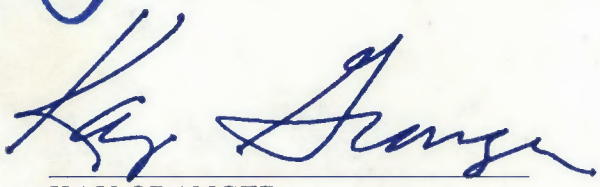
VICKY HARTZLER
Member of Congress



JEFF MILLER
Member of Congress

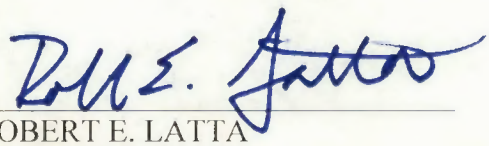


DANA ROHRABACHER
Member of Congress

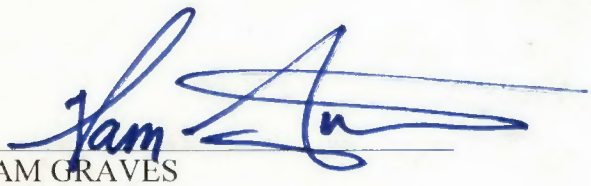


KAY GRANGER
Member of Congress

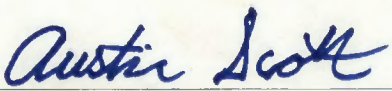
BLAKE FARENTHOLD
Member of Congress



ROBERT E. LATTA
Member of Congress

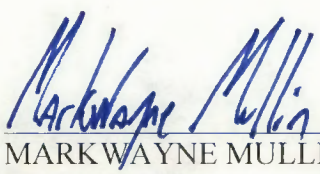


SAM GRAVES
Member of Congress

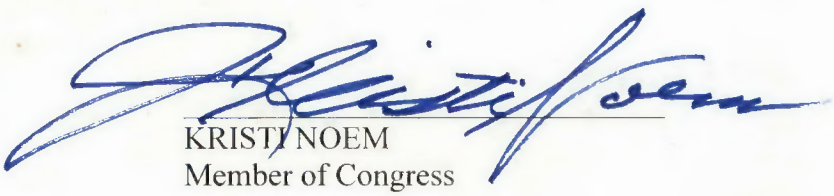


AUSTIN SCOTT
Member of Congress

RANDY HULTGREN
Member of Congress



MARKWAYNE MULLIN
Member of Congress



KRISTI NOEM
Member of Congress

DANIEL WEBSTER
Member of Congress

BLAINE LUETKEMEYER
Member of Congress

THOMAS MASSIE
Member of Congress

ADRIAN SMITH
Member of Congress

BILL FLORES
Member of Congress

DAN BENISHEK M.D.
Member of Congress

TED POE
Member of Congress

DARIN LAHOOD
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 29, 2016

OFFICE OF
AIR AND RADIATION

The Honorable Evan H. Jenkins
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Jenkins:

Thank you for your letter of June 23, 2016, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the Supreme Court stay of the Clean Power Plan (CPP) and assistance the EPA is providing to states while the stay is in effect. The Administrator asked that I respond on her behalf.

On February 9, 2016, the Supreme Court stayed the CPP pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court. The EPA firmly believes the Clean Power Plan will be upheld when the courts address its merits because it rests on strong scientific and legal foundations. However, it is clear that no one has to comply with the Clean Power Plan while the stay is in effect. During the pendency of the stay, states are not required to submit anything to the EPA, and the EPA will not take any action to impose or enforce any such obligations. For example, we clearly communicated to states that they were not required to make initial submittals on September 6, 2016.

On June 16, 2016, Administrator McCarthy signed a proposed rule providing details about the optional Clean Energy Incentive Program (CEIP). When final, this will help guide states and tribes that choose to participate in the CEIP when the Clean Power Plan becomes effective. You asked a number of questions about the EPA's legal authority to proceed with the CEIP and other matters related to the CPP. In Section II of the preamble, we discuss why we are issuing the CEIP Design Details proposal, including the legal authority for doing so while the stay is in effect. The proposal is currently out for public comment and is available at https://www.epa.gov/cleanpowerplan/clean-energy-incentive-program. The proposal published in the Federal Register June 30, 2016. The EPA has extended the public comment period an additional 60 days until November 1, 2016. We held a public hearing in Chicago on August 3, 2016. We encourage interested parties to submit comments, identified by Docket ID No. EPA-HQ-OAR-2016-0033. As with all the EPA's rulemakings, we will take the concerns expressed at these hearings, as well as those expressed in written comments into consideration as we move forward.

With respect to other activities, EPA intends to continue providing assistance to states, while being clear that we will respect the stay so long as it is in effect.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator

JOSH MANDEL
STATE TREASURER OF OHIO

July 22, 2011

The Honorable Ray LaHood
Secretary of the Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

The Honorable Lisa Jackson
Administrator of the Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Secretary LaHood and Administrator Jackson,

I am deeply concerned about reports that the National Highway Traffic Safety Administration and the Environment Protection Agency are reviewing a proposal to dramatically increase light vehicle fuel economy standards to as much as 56.2 miles per gallon by 2025. The Center for Automotive Research in Ann Arbor, Mich., predicts that setting the m.p.g. standard to such a high level – above ambitious targets already set – will cost the industry about 260,000 jobs and could force vehicle prices up by nearly $10,000.

The state's weakened manufacturing sector may not be able to sustain such a blow without long lasting adverse effects. Ohio manufacturing – deeply tied to the automotive industry – has been devastated in the past decade. Since 2001, the state's manufacturing payrolls have declined by 345,600 jobs to the current 625,500. The state, which ranks behind only Michigan and Indiana in auto employment, was hard hit by the steep auto industry downturn of the last three to four years.

The loss of high wage, high compensation auto industry jobs has added to the challenges of managing the state's fiscal needs and an $8 billion deficit. A balanced operating budget that passed last month addresses the deficit, but I should point out that auto-related personal tax revenues nationally contribute to some $70

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billion to government every year. Ohio simply cannot afford to lose more good paying auto jobs.

If manufacturing is the backbone of the American economy, then the automotive industry is in its heart. I know that's true of Ohio, with great names like Honda, Chrysler, Ford, General Motors, Honda, Navistar, PACCAR, Cooper Tire & Rubber, Dana, Eaton, Goodyear Tire & Rubber and many others located here.

Ohio's economic growth and fiscal soundness depends in large part on a stable manufacturing sector. I ask you to reconsider any further increase in fuel economy standards at this time.

Sincerely,

Josh Mandel
Treasurer, State of Ohio

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY
2565 PLYMOUTH ROAD
ANN ARBOR, MICHIGAN 48105-2498

AUG 23 2011

Josh Mandel
30 Broad Street
Columbus, OH 43215

OFFICE OF
AIR AND RADIATION

Dear Ms. Mandel:

Thank you for your letter of July 22, 2011, regarding the upcoming fuel economy and greenhouse gas (GHG) emissions rulemaking for model year 2017 to 2025 passenger cars and light trucks. We appreciate your comments and value your interest in these standards, and have added your letter to our administrative docket, EPA-HQ-OAR-2010-0799, established for the rulemaking.

The United States Environmental Protection Agency and the National Highway Traffic Safety Administration (NHTSA) are committed to continuing a strong and comprehensive national program to reduce GHG pollution and enhance our energy security. On July 29, 2011, the President announced a historic agreement with thirteen automakers and the State of California, with the support of the United Auto Workers, to pursue the next phase in the national vehicle program which would establish standards for model years 2017-2025. The standards, which would require performance equivalent to 163 grams per mile of CO_2 or 54.5 miles per gallon by 2025, will reduce America's dependence on foreign oil and result in significant savings at the pump for American families. Importantly, under the new standards, consumers will continue to have access to the same full range of vehicle choices that they have today. Information on this announcement, including letters of support from the thirteen automakers and a Supplemental Notice of Intent issued by the EPA and NHTSA which provides an outline of the agreement, is available on our website at: http://www.epa.gov/otaq/climate/regulations.htm.

The EPA understands the concerns you raise in your letter regarding the need for a balanced approach for setting new standards. We are working closely with auto manufacturers and other stakeholders to ensure the upcoming standards are achievable, cost effective, and preserve consumer choice. I assure you that we are carefully analyzing the potential impacts of the standards under consideration. The EPA and NHTSA will issue a joint proposed rulemaking which will include full details on the proposed program and supporting analyses, including the costs and benefits of the proposal and its effects on the economy, auto manufacturers, and consumers. The EPA understands the public interest in this rulemaking and is committed to broad public participation. The upcoming rulemaking will provide a full opportunity for the public to comment and the EPA will carefully consider all comments received.

Again, thank you for your letter. I appreciate the opportunity to be of service and trust the information provided is helpful.

Sincerely,

Chester J. France, Director
Assessment and Standards Division